

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL.
77-7103
77-7115

United States Court of Appeals

For the Second Circuit

CANDACE VAN ALLEN,

Plaintiff-Appellant-Appellee,

—against—

DOMINICK & DOMINICK, INCORPORATED and
PAUL deGIVE,

Defendants-Appellees-Appellants.

JOINT APPENDIX

VOLUME I

Pages A-1 — A-277

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TABLE OF CONTENTS

	<u>Page</u>
Docket Entries	A-1
Summons	A-8
Complaint	A-9
Amended Complaint, dated 4/17/72	A-17
Schedule "A", attached to Amended Complaint	A-20
Second Amended Complaint.....	A-26
Report of United States Magistrate (re Jury Demand)	A-31
Endorsement Order (re Jury Demand), dated 4/18/74	A-35
Page 9 of Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment	A-36
Excerpts from Memorandum of Defendants, dated August 1, 1974, in Opposition to Plaintiff's Motions for Leave to Amend and for Summary Judgment against Defendant Dominick & Dominick	A-37
Page 14 of Reply Memorandum of Plaintiff to Defendants' Memorandum in Opposition to Plaintiff's Motion for Leave to Amend and for Summary Judgment	A-45
Endorsement Order (re Leave to Amend) dated November 19, 1974	A-46
Plaintiff's Third Amended Complaint	A-47
Defendants' Answer to Third Amended Complaint	A-53
Endorsement Order Dismissing the Fifth Count, dated June 30, 1975	A-56
Notice of Settlement and Order, dated 7/11/75	A-60
Pre-Trial Order, dated March 17, 1976	A-62
Defendants' Amendment to Pre-Trial Order, dated August 5, 1976	A-114
Excerpts from Transcript of the Proceedings of U.S. District Court held on November 8-12 and 15-17, 1976..	A-151

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
<u>Witnesses</u>	
Candace Van Alen	
Direct	A-157
Cross	A-184
Redirect	A-296
Recross	A-299
Further Redirect	A-301
 Paul deGive	
Direct	A-303
Cross	A-608
Redirect	A-660
 Avery Rockefeller	
Direct	A-674
Cross	A-675
 John J. McDonald	
Direct	A-689
Cross	A-702
 Mary Grace Watson - Deposition	A-721
Thomas C. Mitchell - Deposition	A-737
 Order and Opinion, dated December 22, 1976	A-772
Notice of Motion for Attorneys' Fees, dated January 14, 1977	A-810
Affidavit of Jeffrey A. Barist in Support of Motion for Attorneys' Fees	A-812
Exhibit A - Letter from Jerome Kamerman to Hon. Morris E. Lasker, dated January 12, 1977	A-817
Exhibit B - Schedule of Depositions	A-818

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Affidavit of Jerome Kamerman in Opposition to Defendants' Motion Requiring Plaintiff to Pay to Defendants Reasonable Attorneys' Fees	A-820
Reply Affidavit of Jeffrey A. Barist in Support of Defendants' Motion for Reasonable Attorneys' Fees...	A-825
Endorsement Order (re Attorneys' Fees) dated January 25, 1977	A-828
Final Judgment, dated January 27, 1977	A-829
Plaintiff's Notice of Appeal, dated February 25, 1977..	A-830
Defendants' Notice of Appeal, dated February 25, 1977..	A-831

EXHIBITS

Plaintiff's Exhibit 1 - Copies of NYSE Rules 342, 405 and 408, in effect during the period covered by the complaint, and NYSE Educational Circular No. 252, dated December 20, 1968	A-832
Plaintiff's Exhibit 2 - Schedules reflecting the frequency and number and money value of securities transactions executed by defendants in plaintiff's accounts at Dominick, Bank of New York and First National City Bank during the period from February 10, 1969 through March 3, 1970	A-842
Plaintiff's Exhibit 8 - Frequency and Number of Securities Transactions Executed by Defendants in Plaintiff's Accounts	A-850
Plaintiff's Exhibit 10 - deGive's Technical Comments dated May 26, 1969	A-851
deGive's Technical Comments dated January 12, 1970..	A-852
Plaintiff's Exhibit 11 - Excerpts from Dominick and Dominick's Manual, pages 12, 20, 108	A-853
Plaintiff's Exhibit 12 For Identification - deGive's Diary	A-856
Plaintiff's Exhibit 14 - Eleanor deGive's Confirmation File	A-870

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Plaintiff's Exhibit 20 - Summary of Month End Value of Plaintiff's Portfolio, from January 31, 1969 to March 31, 1970	A-891a
Plaintiff's Exhibit 27 - Copy of Form Letter dated April 29, 1953 to Empire Trust Company from Candace Van Alen	A-892
Plaintiff's Exhibit 28 - Opening Account Card for Candace Van Alen at Dominick & Dominick, dated July 23, 1953 (cash account) and May 16, 1963 (margin account)	A-893
Plaintiff's Exhibit 29 - Dominick & Dominick "Customer's Agreement", dated May 16, 1963 and signed by Candace Van Alen	A-895
Plaintiff's Exhibit 30 - Letter of Instructions Relative to Custodian Account for Candace Van Alen, dated October 23, 1969	A-897
Plaintiff's Exhibit 31 - Letter, dated October 24, 1969, Candace Van Alen to The Bank of New York	A-901
Plaintiff's Exhibit 60 - deGive's Technical Comments dated October 13, 1969	A-902
Plaintiff's Exhibit 63 - Eleanor deGive Account at Dominick & Dominick	A-903
Plaintiff's Exhibit 72 (Excerpts) - Plaintiff's Second Set of Interrogatories dated February 1, 1973 - Questions 2c, 2d, 2f, 5a, 5f, 6a and 6b -- and Defendant Dominick's Answers to those respective questions dated April 2, 1973	A-910
Defendants' Exhibit 2 - Letter, dated April 3, 1970, Candace Van Alen to Paul deGive	A-919
Defendants' Exhibit 6 - Form Letter, dated December 24, 1948, Candace Van Alen to Empire Trust Company..	A-920
Defendants' Exhibit 7 - Empire Trust Company Internal Form, dated January 12, 1949, re Candace Van Alen's Custody Accounts	A-926

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Defendants' Exhibit 14 - Letter, dated April 3, 1970, from Candace Van Alen to First National City Bank...	A-928
Defendants' Exhibit 25 - Letter, dated September 21, 1962, from Mary Grace Watson to Howard R. Pugh	A-929
Defendants' Exhibit 27 - Letter, dated July 19, 1963, Paul deGive to Candace Van Alen	A-930
Defendants' Exhibit 28 - Loan Offering Sheet, dated Sept. 22, 1965, re Proposed \$200,000 Loan to Candace Van Alen	A-931
Defendants' Exhibit 30 - Office Memorandum, dated June 15, 1967, to Loan Department from L. Clark, Jr.	A-933
Defendants' Exhibit 31 - Internal documents of Bank of New York relating to Candace Van Alen loans at Bank of New York in 1967 and 1968:	
31-A - Memorandum re Loans to Candace Van Alen on January 13, 1967, May 15, 1967 and April 15, 1968	A-935
31-B - Loan Liability Ledger	A-936
31-C - Form, dated April 15, 1968, entitled "Demand Loan"	A-937
31-D - Form, dated October 22, 1968, entitled "Demand Loan"	A-939
31-E - Statement of Purpose of the Proceeds of a Stock-Secured Extension of Credit by a Bank (Federal Reserve Form U-1), dated April 15, 1968, and signed by Candace Van Alen	A-940
31-F - Form entitled "Liability of Candace Van Alen"	A-942
Defendants' Exhibit 36 - Letter, dated September 10, 1954, Paul deGive to Mrs. James H. Van Alen	A-943
Defendants' Exhibit 37 - Letter, dated January 18, 1955, Paul deGive to Mrs. James H. Van Alen	A-944

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Defendants' Exhibit 38 - Letter, dated June 15, 1955, Paul deGive to Mrs. James Van Alen	A-945
Defendants' Exhibit 39 - Letter, dated June 5, 1955, Candace Van Alen to Paul deGive	A-946
Defendants' Exhibit 40 - Letter, dated June 7, 1962, Candace Van Alen to Paul deGive	A-948
Defendants' Exhibit 42 - Letter, dated November 19, 1968, Paul deGive to Mary Grace Watson	A-949
Defendants' Exhibit 43 - Letter, dated April 3, 1970, Candace A. Van Alen to Dominick & Dominick, Inc. ..	A-950
Defendants' Exhibit 44 - Letter, dated August 13, 1969, Paul deGive to Candace Van Alen	A-951
Defendants' Exhibit 45 - Letter, dated November 20, 1969, Paul deGive to Mrs. James Van Alen	A-952
Defendants' Exhibit 46 - Letter, dated October 14, 1968, Mrs. James H. Van Alen to Bank of New York, atten- tion Mr. Muecke	A-953
Defendants' Exhibit 47 - Letter, dated January 16, 1968, to Mrs. James H. Van Alen	A-954
Defendants' Exhibit 60 - Letter, dated October 10, 1968, Mary Grace Watson to The Bank of New York	A-955
Defendants' Exhibit 84 - Letter, dated April 9, 1953, Gordon Murphy to Paul deGive	A-956
Defendants' Exhibit 98(A) - Candace Van Alen, Chrono- logical List of Transactions by Trade Date, 1964- 1968, Combined Accounts at Dominick and Empire Trust/Bank of New York	A-958
Defendants' Exhibit 98(B) - Candace Van Alen, Chrono- logical List of Transactions by Trade Date, Febru- ary 11, 1969 - March, 1970, Combined Accounts at Dominick, Bank of New York and First National City Bank	A-977

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Defendants' Exhibit 98(C) - Candace Van Alen, Account at Empire Trust/Bank of New York, Schedule of Transactions 1964-1968	A-983
Defendants' Exhibit 98(D) - Candace Van Alen, Account at Dominick, Schedule of Transactions, 1953-1968 ...	A-992
Defendants' Exhibit 98(F) - Schedule reflecting Candace Van Alen's Profit and (Loss) on Dominick and Empire Trust/Bank of New York Accounts	A-1005
Defendants' Exhibit 100 - Letter, dated November 18, 1968, Mary Grace Watson to Paul deGive	A-1007
Defendants' Exhibit 111 - Letter, dated October 14, 1968, Wyndham R. Hunt to Mary Grace Watson	A-1008
Defendants' Exhibit 116 - deGive's "Technical Comments":	A-1009
#295 - February 11, 1969	A-1010
#296 - February 17, 1969	A-1012
#305 - April 30, 1969	A-1013
#306 - May 5, 1969	A-1015
#328 - October 20, 1969	A-1016
#329 - October 27, 1969	A-1017
#331 - November 10, 1969	A-1018
#338 - December 29, 1969	A-1019
#342 - January 26, 1970	A-1023
#347 - March 2, 1970	A-1024
Defendants' Exhibit 233 - Paragraph (c) of Letter, dated March 8, 1974, Philip Greenberg of Kamerman & Kamerman to Vincent R. FitzPatrick, Jr. of White & Case	A-1025
Defendants' Exhibit 242 - Commissions and Losses in Candace Van Alen Accounts, February 1969-April 1970.	A-1027
Defendants' Exhibit 244 - Securities Purchased for Candace Van Alen, February 11, 1969 - March, 1970...	A-1028
Defendants' Exhibit 245 - Summary of Candace Van Alen Loans	A-1029
Court Exhibit 1 - Defendants' Memorandum in Support of Defendants' Motion to Suppress Testimony and Docu- ments	A-1030

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
Court Exhibit 2 - Letter, dated March 25, 1971, Kamerman & Kamerman to Dominick & Dominick	A-1040
Court Exhibit 3 - Letter from Jerome Kamerman to Thomas F. Carey, Assistant Compliance Director of Dominick & Dominick, dated February 19, 1971	A-1041
Court Exhibit 4: Letter from Charles N. Shaffer to Judge Pierce, dated November 16, 1976	A-1042
Affidavit of Jerome Kamerman in Opposition to Defendants' Motion to Suppress Testimony and Documents	A-1043
Exhibit A - Notes of Meeting with Carey of Dominick & Dominick in October of 1970	A-1046
Exhibit B - Letter from Carey to Jerome Kamerman, dated November 3, 1970 ..	A-1047
Exhibit C - Copy of diary entry of Jerome Kamerman dated December 28, 1970 ..	A-1048
Exhibit D - Copy of diary entry of Jerome Kamerman dated June 21, 1971	A-1049
Plaintiff's Memorandum in Opposition to Defend- ants' Motion to Suppress Testimony and Docu- ments	A-1050

Docket Entries

A-2

CANDACE VAN ELLEN VS. DOMINICK & DOMINICK INCORP. ETC, ET AL

JUDGE TYLER

71 ON 5438

DATE	PROCEEDINGS	Date Order or Judgment Noted
DEC 14-71	FILED COMPLAINT. ISSUED SUMMONS.	
DEC 14-71	FILED NOTICE OF ASSIGNMENT. J. TYLER.	
1/4/72	Filed Summons and marshals ret. Served: Paul deGive on 12/28/71.	
Jan 17/72	Filed Defts. Notice of Deposition.	W&C
Jan 17/72	Filed Defts. ANSWER.	
Mar. 20-72	Filed Plaintiff's Interrogatories.	
APR 13-72	Filed request to produce.	
Apr. 13-72	Filed stipulation and order amending complaint in accordance with Exhibit 1 annexed thereto. So ordered. Tyler, J.	
Apr. 19-72	Filed Amended Complaint.	
May 2-72	Filed stipulation and order extending defendants time to answer amended complaint to 5/26/72. So ordered. Tyler, J.	
May 24-72	Filed stipulation and order extending defendant's time to answer pltf's Interrog. and to respond to pltf's request to produce, to 6/8/72. So ordered. Tyler, J.	
May 26-72	Filed ANSWER of defts. Dominick & Dominick, Inc. and Paul deGive to amended complaint.	W&C
Jun 8-72	Filed Answers to deft. Dominick & Dominick, Inc. to Pltf's Interrog.	
Jun 8-72	Filed Answer of deft. Dominick & Dominick, Inc. to Request to Produce.	
Jun 28-72	Filed Notice to take Deposition of Avery Rockefeller, Jr.	
Jun 28-72	Filed Notice to take Deposition of Thomas Mitchell.	
Sept 29-72	Filed pltf request for admission of facts from Deft Dominick & Dominick.	
Oct 6-72	Filed pltf's Notice to take deposition of John J. Mulcahy, Jr. on Nov 17-1972.	
Oct 17-72	Filed defts Notice to take deposition of the First National City Bank on October 27, 1972.	
Oct 17-72	Filed defts Notice to take deposition of The Bank of New York on October 26, 1972.	
Oct 18-72	Filed pltf's second request for admission of facts.	
Oct 31-72	Filed deft Dominick & Dominick Inc. for answer to pltf's request for admission of facts. (Response to admit).	
Nov 1-72	Filed Notice that the pltf will take deposition as a witness National Association of Securities Dealers, Inc. on Nov 14-1972.	
Nov 1-72	Filed Notice to take deposition of Securities & Exchange Commission by pltf on Nov 13th, 1972.	
Nov 14-72	Filed Affidavit of Jeffrey A. Barist, (att'y for defts) in opposition to pltf's motion to serve a second amended complaint (hereinafter the proposed amended complaint)	
Nov 14-72	Filed Affidavit of Jeffrey A. Barist (att'y for defts) in opposition to pltf's motion to compel defts to produce the trading record of any discretionary account over which deft DeGive had control or the period Feb 10-1969 through March 31, 1970.	
Nov 16-72	Filed pltf's Reply Affidavit in reply to defts opposition to pltf's motion for an order compelling defts to produce the trading record of any discretionary account over which deft DeGive had control for the period of Feb 10th, 1969 through March 31, 1970.	
Nov 16-72	Filed pltf's reply affidavit in reply to the affidavit in opposition to pltf's motion to serve a second amended complaint, as indicated.	
Nov 20-72	Filed defts Dominick & Dominick Inc responds to notice to admit.	
Nov 21-72	Filed Affidavit & Notice of Motion of Jerome Kernerman, for an order requiring defts Dominick, & Dominick Incorp. and Paul DeGive to produce and to permit pltf to inspect and copy the documents as indicated.	
Nov 21-72	Filed pltf's memorandum in support of motion for document production.	
Nov 21-72	Filed Notice that pltf will take deposition of Robert Hoquet, purs to the FRCP. on Dec 1st, 1972.	
Nov 21-72	Filed pltf's memorandum in support of motion for leave to file second amended complaint.	
Nov 21-72	Filed pltf's Affidavit & Notice of Motion for leave purs to Rule 15 of the FRCP. to file an amended complaint in the form attached as indicated.	
Nov 21-72	Filed memo endorsed on motion filed on Nov 21-72; Motion denied without prejudice, however to right of pltf's counsel to submit within one week a redrafted proposed amended complaint.	

CONTINUED PAGE 3 TYLER, J.

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Docket Entries

A-3

CANDACE V N EILEN VS. DOMINICK & DOMINICK INC. CORP. ETC, et-al

PAGE 3

71-543A

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment Made
Nov30-72	Filed second amended complaint.	
Dec1-72	Filed pliffs demand for jury trial.	
Dec4-72	Filed Order that leave be and is hereby given to the pliff. for leave to amend pliffs complaint. Tyler, J.	
Dec11-72	Filed pliffs interrogatories to to pliff.	
Dec11-72	Filed pliffs Notice to take deposition of Stafford McLean on Dec 27th, 1972	
Dec15-72	Filed stip & order that the time for defts to answer etc, with respect to the second amended complaint is extended to Dec 26, 1972. Duffy J.	
Dec26-72	Filed ANSWER TO second amended complaint.	
Jan11-73	Filed stip & Order that the time of pliff to move etc. is extended to Jan 5th, 1973. Duffy, J.	W.C.
Jan15-73	Filed letter of Jeffrey A. Barant addressed to Judge Duffy, rel to the above captioned case.	
Jan22-73	Filed stip & order that the time for pliff to answer etc, is extended to Jan 24th, 1973. Duffy, J.	
Jan26-73	Filed ANSWERS OF pliff to defts interrog atories.	K2K
Feb1-73	Filed pliffs interrogatories to deft Dominick & Dominick,	
Feb1-73	Filed pliffs interrogatories to deft Paul De Giv.	
Feb13-73	Filed pliffs Affidavit & Notice of Motion to lift the stay on pretrial examinations, rtble, on Feb 21, 1973.	
Feb13-73	Filed pliffs memorandum in support of motion to lift the stay on pretrial examinations.	
Feb20-73	Filed pliffs Affidavit & Notice of Motion for an order rendering a judgment by default against defts, rtble, Feb 23-1973.	
Feb20-73	Filed pliffs memorandum in support of motion to impose sanctions for failure to comply with order.	
Feb21-73	Filed Reply Affidavit. (to answer defts)	
Feb22-73	Filed reply affidavit of Jeffrey A. Barist, atty associated White & Case, in opposition to pliffs motion under an unspecified rule for an order rendering a judgment by default against defts.	
Mar.7-73	Filed stipulation and order extending defendants time to answer or object to pliff's interros. to 4/1/73. So ordered. Pierce, J.	
Mar.15-73	Filed MEMO. END. on motion papers filed 2/13/73. This motion to lift the stay imposed upon plaintiff is referred to Magistrate Raby for conference, and/or hearing, and recommendation. So ordered. Pierce, J.	
Mar.14-73	Filed MEMO. END. on motion papers filed 2/20/73. This motion to impose sanctions for failure to comply with the Court's discovery order is deemed to be made pursuant to FRCP 37(b)(r) and is referred to Magistrate Raby for conference and/or hearing and recommendation. So ordered. Pierce, J.	
Apr 2.73	Filed ANSWERS of Dft. Dominick & Dominick Inc. to pliffs. Interros.	
Apr 2.73	Filed Answers of Paul deGiv to Pliff's Second Set of Interros.	
May 7.73	Filed Affidavit by Jeffrey A. Barist in opposition to pliffs. motion for order to lift the stay upon subpoenas, etc.	
May 7.73	Filed Dfts. Memorandum in opposition to pliff's motion to lift the Stay on Pre Trial Examinations.	
May 7.73	Filed Report of U.S. Magistrate Harold J. Raby.	
May 8.73	Filed 2nd Memo. End. on motion dated 2/20/73. Motion granted to extent indicated in report of Magistrate Raby dated 4/12/73. Filed 5/7/73.	
May 8.73	Filed 2nd Memo. End. on motion dated 2/13/73. Motion granted to extent indicated in report of Magistrate Raby dated 4/12/73. Filed 5/7/73.	
Feb 23.73	Filed Reply Affidavit by Jerome Kamerman for pliff. Entered 5/11/73.	
Sep.28-73	Filed defts. (notice to take deposition of Gordon S. Murphy.	
Sep.28-73	Filed defts. (notice to take depositions of U.S.Tr.Co.	
Oct.17-73	Filed order referring action to Magistrate Raby.	

-Cont'd Page #4--

Docket Entries

A-4

71 Civ 5438

Van Alen vs. Dominick & Dominick et ano

71 civ 5438

Page #4.

DATE	PROCEEDINGS	Date Order or Judgment Noted
Oct.30-73	Filed defts. affdvt & notice of motion to strike jury demand-Ret. 11-14-73.	
Oct.30-73	Filed defts. memorandum in support of motion to strike.	
Nov.12.73	Filed Answering Affidavit by Jerome Kamerman in opposition to defts. motion to strike plttfs. jury demand.	
Nov.12.73	Filed Memorandum of plttf. in opposition to defts. motion to strike plttf's jury trial demand.	
Nov.14.73	Filed Defts. Reply memorandum in support of motion to strike plttfs MEMO jury trial demand.	
Nov.21.73	Filed Plttfs. Interrogs to deft. Paul DeGive Answer.	
Dec.12.73	Filed Memo. End. on motion dated 10/30/73. Motion is referred to Magistrate Raby. Pierce J. (mailed notice)	
11-26-73	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Raby</i>	
Jan. 28-74	Filed stip & order extending deft's (deGive) time to answer interrogs. to 2-5-74 ---Pierce, J.	
Feb. 4-74	Filed defts' interrogs.	
Feb 13.74	Filed Stip & Order that the time for deft. Paul deGive to answer interrogs is extended to 2/15/74; & deft. Dominick & Dominick to interrogs. is 2/15/74. Pierce J.	
Feb. 15-74	Filed deft's (Paul De Give) answers to interrogs.	
Feb. 15-74	Filed deft's (Paul De Give) answers to interrogs.	
Feb. 15-74	Filed deft's (Dominick & Dominick) answers to interrogs.	
Nov21.72	Filed Memo End. on motion dated 11/16/72. Motion denied without prejudice to renewal or the within papers once the pending question of plttfs. proposed amended complaint is resolved. Tyler J.	
3-6-74	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Raby</i>	
Mar. 8-74	Filed plttf's notice of motion to vacate examinations.-Ret. 10-29-73.	
Mar. 8-74	Filed memo endorsed on motion filed this date-Motion withdrawn per stip. of parties dated 1-22-74--Pierce, J.	
Mar. 8-74	Filed plttf's memorandum in support of motion to vacate.	
Mar. 8-74	Filed deft's affdvt in opposition to plttf's motion to vacate.	
Mar. 8-74	Filed defts. memorandum in opposition to plttf's motion to vacate.	
Mar. 8-74	Filed plttf's affdvt in reply to defts. opposition to motion to vacate.	
Mar. 8-74	Filed plttf's reply memorandum in support of motion to vacate.	
Nov. 14-73	Filed deft's reply memorandum in support of motion to strike.	
Mar. 8-74	Filed stip & order for pre-trial discovery procedure--Pierce, J.	
Mar 12/74	Filed Plttfs. Answer to interrogs.	
Apr 24.74	Filed Memo. End.. on motion dated 10/30/73. Deft's motion is granted. Plttfs. demand for jury trial is hereby stricken. Pierce J. (mailed notice)	
Apr 23.74	Filed Report of U.S. Magistrate Raby.	
Apr 23.74	Filed Affidavit in opposition to Magistrate's report by Jerome Kamerman.	
Apr 25.74	Filed Defts. Reply Memorandum.	
May 17.74	Filed Plttfs. Notice of Motion & Affidavit in support. Re: Summary Judgment. ret. 6/17/74.	
May 17.74	Filed Plttfs. Memorandum of law in support to motion for summary judgment.	
May 17.74	Filed Plttfs. Notice of Motion & Affidavit in support. Re: Amend the Complaint ret. 6/17/74.	
Jun 17.74	Filed Stip & Order that plttfs. motion is adjourned to 7/17/74. & the time for deft. to answer is extended to 7/12/74. Pierce J.	
8-5-74	Filed deposition of Paul DeGive on 3-9-72 (mailed notice)	
Aug 5-74	Filed continued deposition of Paul deGive on 5-23-73 (mailed notice)	
Aug 5-74	Filed continued deposition of Paul deGive on 10-30-72 (mailed notice)	
Aug 5-74	Filed deposition of Candace Van Alen on 3-12-74 (mailed notice)	

(CONTINUED)

Van Alen VS Dominick & Dominick et al

71CIV5438

DATE	PROCEEDINGS
Aug 5-74	Filed deposition of Frank McMahon on 11-30-72 (mailed notice)
Aug 5-74	Filed deposition of Grover C. Jensen on 12-19-72 (mailed notice)
Aug 5-74	Filed deposition of William McCarthy on 1-31-73 (mailed notice)
Aug 5-74	Filed deposition of Elliott Pincus on 2-20-73 (mailed notice)
Aug 5-74	Filed deposition of William J. Crowe, Jr. on 5-22-73 (mailed notice)
Aug 5-74	Filed deposition of Thomas Mitchell on 9-12-72 (mailed notice)
Aug 5-74	Filed deposition of Avery Rockefeller on 9-11-72 (mailed notice)
Aug 5-74	Filed deposition of Mary Grace Watson on 12-12-72 (mailed notice)
Aug 5-74	Filed deposition of Gordon S. Murphy on 3-27-74 (mailed notice)
Aug 5-74	Filed deposition of Candace Van Alen on 1-17-72 (mailed notice) <i>error</i>
Aug 5-74	Filed Memorandum of Defts. in opposition to pliffs. motions for leave to amend & for summary judgment against deft. Dominick & Dominick
Aug. 5.74	Filed Defts. Affidavit by Jeffrey A. Barist in opposition to motions of pliff. for leave to amend her complaint for the 3rd time to assert a proposed new count & for summary judgment against Dominick & Dominic alone on that new count.
Aug 5.74	Filed Stip & Order that the time for pliffs. motion to serve 3 amended complaint & summary judgment is adjourned to 8/7/74, & the time for defts. to answer motion is extended to 8/2/74, & pliff. shall file a statement pursuant to rule 9(g) by 7/25/74. Pierce J.
Aug 12.74	Filed Stip & Order that pliffs. motion is adjourned to 9/4/74; & pliffs. time to serve reply to defts. Affidavit in opposition is 9/3/74. Pierce J.
Sep 11.74	Filed Stip & Order that pliffs. motion is adjourned to 9/25/74 & the time for pliff. to reply to defts. Affidavit in opposition is extended to 9/24/74. Pierce J.
Oct. 1-74	Filed stip & order adjourning motion of pliff. for leave to seve 3rd pty amended complaint & for summary judgment to 10-16-74. Pliff's time to serve reply papers to defts. affdvt in opposition is extended to 10-15-74--Pierce, J.
Oct 16.74	Filed Reply Memorandum of Pliff. to defts. memorandum in opposition to pliffs. motions for leave to amend & for summary judgment against Dominick & Dominick.
Nov. 25-74	Filed memo endorsed on motion filed 5-17-74-Motion for leave to amend the complaint is granted. Pliff's companion motion for summary judgment on the new claim will not be determined at this time. Deft. will have 20 days from the service to answer with respect to it. -So Ordered--Pierce, J. Mailed Notices.
✓ Dec. 20-74	Filed THIRD AMENDED COMPLAINT.
✓ Jan. 8-75	Filed ANSWER of defts. to 3rd amended complaint.
Jan. 23-75	Filed deft's (Dominick & Dominick) notice of cross-motion to dismiss ct. 5 of 3rd amended complaint-Ret. 2-5-75.
Jan. 23-75	Filed deft's (Dominick & Dominick) memorandum in support of cross-motion to dismiss.
Feb 5.75	Filed Pliffs. Memorandum in opposition to defts. Cross motion to dismiss the 5th Count to pliffs. 3rd Amended Complaint.
Jul 3-75	Filed memo endorsed on motion filed 1-23-75: Defs motion is granted and pliff's motion is denied. Submit Order on two days notice. Pierce, J.
Jul 24-75	Filed order that pliff motion for summary judgment is denied and that defts cross-motion to dismiss the fifth count of the complaint is granted and that said fifth count of the complaint is hereby dismissed with prejudice, Pierce, J. M/N
Aug 13.75	Filed Deposition of Stafford McLean on 1-3-73. (mailed notice)
Sep 5-75	Filed Order of Reference to Mag. Raby. etc, as indicated, Pierce, J.
9-25-75	PRE-TRIAL CONFERENCE HELD BY RABY
2-23-76	Filed Notice of Appearance by Shaffer, McKeever & Fitzpatrick as indicated, NEW YORK MAILING ADDRESS KATZMAN & KATZMAN, 500 FIFTH AVE, N.Y.C. N.Y. 10036
✓ 3-1-76	Filed pliffs. Motions Pleadings and Answer etc, as indicated.
3-1-76	Filed Pliffs Affidavit & Order to show cause why a preliminary injunction should not issue herein, etc, as indicated, table before Pierce J. on 3-2-76, Pierce, J.
3-11-76	PRE-TRIAL CONFERENCE HELD BY RABY U.S. MAG.

Docket Entries

A-6

WILLIAM VAN ALLEN VS. DOMINICK & DOMINICK, INC. ET-AL

DATE	PROCEEDINGS
4-14-76	Filed Pltffs Statement Re: Expert Testimony as indicated.
4-26-76	Filed pltffs proposed pre trial findings of fact and conclusions of law.
4-26-76	Filed pltffs memorandum of law as indicated.
4-26-76	Filed defts proposed findings of fact and conclusions of law.
4-26-76	Filed pre trial memorandum of defts Dominick & Dominick, Inc. and Paul DeGiv.
3-4-76	PRE-TRIAL CONFERENCE HELD BY <i>KABY</i>
4-6-76	Filed Dfts. Proposed Amendment to Pre Trial Order.
8-6-76	Filed Pltfs. Request for Admission.
8-31-76	Filed pltffs request for admissions as indicated.
9-1-76	Filed pltffs objections to request for admission etc, as indicated.
9-30-76	Filed deft s response to pltff request for admissions.
10-5-76	Filed defts Dominick & Dominick, Inc. and Paul De Give requests for admissions as indicated.
10-29-76	Filed pltffs objections to admission of documents etc, as indicated.
11-22-76	Filed Pltffs omnibus memorandum at the close of all evidence.
11-24-76	Filed defts supplemental memorandum in support of motion to dismiss etc, as indicated.
11-26-76	Filed Pltffs memorandum in support of admissibility MIS Rule etc, as indicated.
11-26-76	Filed defts memorandum in support of motion to dismiss purs to FRCP. 11 (b).
11-26-76	Filed defts objections to Mitchell testimony as indicated.
11-8-76	Not jury trial begun
11-9-76	Trial cont'd
11-10-76	Trial cont'd
11-11-76	Trial cont'd
11-12-76	Trial cont'd
11-15-76	Trial cont'd
11-16-76	Trial cont'd
11-17-76	Trial cont'd & concluded-Decision Res. (attys)
12-8-76	Filed Stip & agreed that the respective parties indicated that the list of summary schedules annexed hereto as Schedule B to the Pre Trial Order represents all the summary schedules which have been agreed to by counsel, etc, and further stipulated and agreed that any objections which counsel for any party has to any part of said schedules in noted on or annexed to said schedules.
12-23-76	Filed Opinion #45469. Judgment should be entered for defts. Paul deGiv & Dominick & Dominick, Inc., dismissing the complaint with prejudice & with costs. Counsel for defts. are directed to submit an appropriate order of judgment.
12-30-76	Pierce J. (mailed notice) <i>Order & Judgment</i> Filed Order statistically closing case, all claims having been determined by the opinion & order of this Court dtd. 12-22-76. Pierce, J.
1-14-77	Filed Dfts. Notice of Motion & Affidvt. for order requiring pltffs to pay defts <i>EM</i> as part of the costs taxed in favor of defts. Ret.
1-21-77	
1-14-77	Filed Dfts. Memorandum of Law.
1-20-77	Filed pltff's affidavit in opposition to defts motion to have <i>deft</i> pltff pay deft's attys' fees.
1-20-77	Filed memo in opposition to defts' motion to require pltff to pay defts' attys' fees and disbursements.
1-31-77	<i>Filed affidavit in support of defts motion for attorney's fees.</i>
1-26-77	Filed Memo-End. on defts. motion filed 1-14-77 Defts' motion for attys. fees, attached hereto, is hereby denied. An appropriate order of judgment shall be entered forthwith. So Ordered. PIERCE, J. m/n

See Next Pge.

Docket Entries

A-7

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO
CANDACE VAN ALLEN,		DOMINICK & DOMINICK, INC., ET. ANO.	71-5438
			PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	PIERCE I
1-28-77		Filed JudgmentOrdered that the pltff., Candace Van Alen, take nothing, that the action be dismissed on the merits, and that the defts, Dominick, & Dominick, Inc., and Paul de Give recover of the pltff. Candace Van Alen, their costs to be taxed of this action. PIERCE.J. m/n Judgment Entered.. 1-31-77. Clerk.	
2-28-77		Filed Copy of Judgment dated 1-28-77 with affdvt. of service seerved Dominick & Dominick and Paul de Give, on 2/4/77.	
2-25-77		Filed Pltffs. notice of appeal to 2nd Circuit from the final judgment dismissing pltff's complaint ent on 1/31/77. Mailed copy.	
2-25-77		Filed defts. notice of appeal to 2nd Circuit from the order denying their motion for reasonable attys' fees ent on 1/26/77...Mailed copies.	

SUMMONSSummons in a Civil Action

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

JUDGE TYLER

71 CIV. 5438

CANDACE VAN ALLEN,

CIVIL ACTION FILE NO. _____

Plaintiff

v.

DOMINICK & DOMINICK INCORPORATED and
PAUL deGive,

Defendants.

To the above named Defendant :

You are hereby summoned and required to serve upon

KAMERMAN & KAMERMAN

plaintiff's attorneys, whose address 500 Fifth Avenue, New York,
N. Y. 10036

an answer to the complaint which is herewith served upon you, within
twenty days after service of this summons upon you, exclusive of the
day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON
Clerk of Court.

I. WEINBERG
Deputy Clerk

Date: New York, N.Y., December 14, 1971

[Seal of
Court]

Note:--This summons is issued pursuant to Rule 4 of the
Federal Rules of Civil Procedure.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CANDACE VAN ALLEN,

Plaintiff,

-against-

DOMINICK & DOMINICK INCORPORATED and
PAUL deGIVE,

Defendants.

COMPLAINT

-----x
Plaintiff for her complaint, by her attorneys Kamerman & Kamerman,
alleges as follows:

1. This case arises under the Securities Exchange Act of 1934, 15 U.S.C. paragraph 78 (the "Act"), in particular paragraphs 10 and 20 of the Act, 15 U.S.C. paragraphs 78j and 78t, and the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder. Jurisdiction is based upon the Act and particularly upon paragraph 27 thereof, 15 U.S.C. 78aa.
2. Defendant Dominick & Dominick Incorporated (Dominick) is and was at all times hereinafter mentioned a corporation doing business as stock brokers, with its principal place of business located at 14 Wall Street, New York, New York.
3. Defendant Paul deGive (deGive) is and was at all times herein-
after mentioned an employee of defendant Dominick and as such was its registered representative who dealt with plaintiff and was designated and directed by said defendant to deal and trade for plaintiff, and the acts and omissions of deGive herein alleged were in the course of his employment and

within the scope of his authority.

4. Beginning on or about February 10, 1969, and continuing thereafter to about March 31, 1970, defendants used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities in contravention of the Act and Rule 10 b-5 of the Securities and Exchange Commission. Such use and employment of manipulative and deceptive devices and contrivances involved the use of means and instrumentalities of Interstate Commerce and the mails to effect transactions through the medium of members of national securities exchanges in securities registered on national securities exchanges.

5. During the period beginning February 10, 1969 and continuing until about March 31, 1970, defendants in violation of the Act and the Rules and Regulations thereunder, by the use of means and instrumentalities of Interstate Commerce and the mails, in connection with the purchase and sale of securities registered on national securities exchanges -

- a) employed devices, schemes and artifices to defraud;
- b) engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon plaintiff;
- c) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.

6. Such manipulative and deceptive devices and contrivances, schemes, statements, acts and practices included, during the period February 10, 1969 to about March 31, 1970, among other things, grossly and unfairly churning plaintiff's securities accounts by making or causing to be made ~~241~~ separate purchases and sales of securities as set forth in Schedule A, for

the account of plaintiff in accounts which she maintained at Dominick and elsewhere, over which accounts plaintiff had theretofore granted to defendants authority and control to deal with at their discretion but for her benefit.

7. Defendants' purpose in making or causing to be made the said 241 transactions was primarily to create commissions, fees and other income for themselves rather than to benefit plaintiff, and in making or causing the said transactions to be made, defendants recklessly disregarded plaintiff's welfare and the purpose for which she had entrusted to defendants authority and control over her security accounts.

8. As a result of the said 241 transactions, defendants charged or caused to be charged, and plaintiff paid, fees, costs, commissions and interest in excess of \$30,000.00 which sums were paid to defendants and others, and defendants neglected and failed to inform plaintiff that the aforesaid purchase and sale transactions were primarily made for the purpose of producing fees, costs, commissions and other income for defendants rather than in plaintiff's behalf and for her benefit.

9. As a further result of the said 241 purchase and sale transactions which were made or caused to be made by defendants for their own gains and profits rather than for plaintiff's benefit, plaintiff incurred losses and expenses totalling \$577,898.00.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally in the sum of \$577,898.00 with interest, together with the costs and disbursements of this action.

KAMERMAN & KAMERMAN

By

Jerome Kamerman, Member of Firm
Attorneys for Plaintiff
500 Fifth Avenue
New York, New York 10036
Telephone: 244-5245

Complaint

A-12

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1000 Amer. So. African		2/11/69	(\$ 6,412.)
1000 Bongivet Consol. Inc.		2/11/69	(1,506.)
1000 Campbell Rod Lakes		2/11/69	(4,401.)
1000 Homestake Wining		2/11/69	(4,567.)
1000 Int'l Mining		2/11/69	(2,283.)
500 Amer. Hosp. Supply	2/12/69	2/18/69	(824.)
500 Chromalloy Amer.	2/11/69	2/18/69	(3,446.)
500 Chrysler Corp.	2/12/69	2/18/69	(1,656.)
500 Delta Airlines	2/12/69	2/18/69	(1,409.)
500 Eastern Airlines	2/12/69	2/18/69	(1,676.)
500 Lear Sieglon Inc.	2/12/69	2/18/69	(1,221.)
500 Leeson Corp.	2/12/69	2/18/69	(2,479.)
500 Lukens Steel Co.	2/12/69	2/18/69	(1,295.)
500 Ogden Corp.	2/12/69	2/18/69	(391.)
400 Reynolds Metals	2/12/69	2/18/69	(1,441.)
500 Santa Fe Ind.	2/12/69	2/18/69	(1,841.)
1000 Technicolor Inc.	2/13/69	2/18/69	(1,279.)
500 Texas Gulf Sulphur	2/12/69	2/18/69	(1,444.)
500 Trans World Airlines	2/12/69	2/18/69	(2,567.)
500 U. S. Steel	2/12/69	2/18/69	(2,445.)
300 Addressograph	4/30/69	5/26/69	(597.)
500 Amer. Hosp. Supply	4/30/69	5/27/69	(140.)
1000 AMF	4/30/69	5/27/69	(2,791.)
500 AMK Corp.	4/30/69	5/27/69	(2,323.)
500 Ampex Corp.	4/30/69	5/27/69	(299.)
500 Chromalloy Amer.	4/30/69	5/27/69	(2,268.)
500 Cox Broadcasting	4/30/69	5/27/69	(332.)
500 Gulf & Western Ind.	4/30/69	5/27/69	(2,626.)

Complaint

A-13

SCHEDULE "A" ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
500 Kinney Nat'l Ser.	4/30/69	5/27/69	(\$ 232.)
500 Leeson Corp.	4/30/69	5/27/69	(908.)
500 Ling Temco Vought	4/30/69	5/27/69	(1,592.)
400 Litton Inc.	4/30/69	5/27/69	(1,276.)
1000 Ogden Corp.	4/30/69	5/27/69	(5,644.)
500 Santa Fe Inc.	2/30/69	5/27/69	(1,126.)
1000 Texas Oil & Sulphur	4/30/69	5/27/69	(529.)
500 Xtra Inc.	4/30/69	5/27/69	(635.)
1000 Texas Gulf Sulphur	2/24/69	3/10/69	(4,435.)
1000 Chrysler Corp.	3/ 4/69	3/17/69	(2,922.)
1000 Eastern Air Lines	2/19/69	3/17/69	(2,946.)
1000 Lear Lieglon Inc.	2/19/69	3/18/69	(3,027.)
1000 Santa Fe Ind.	2/25/69	3/18/69	(2,534.)
100 TWA	2/27/69	3/18/69	(3,486.)
1000 Republic Steel	3/18/69	3/20/69	(5,351.)
1000 Amer. Hosp. Supply	2/19/69	3/21/69	(1,736.)
1000 Reynolds Metals	2/25/69	3/21/69	(4,152.)
1000 Chromalloy Amer.	2/26/69	4/16/69	(5,827.)
100 Amer. So. African		5/ 7/69	(158.)
1000 Campbell Rod Lake		5/ 7/69	(947.)
1000 Homestake Mining		5/ 7/69	(3,008.)
900 Amer. So. African		5/ 8/69	(1,756.)
1000 Homestake Mining		5/ 8/69	(3,220.)
1000 Homestake Mining		5/ 9/69	(6,125.)
500 Addressograph	5/ 7/69	6/ 4/69	(1,103.)
500 Alleghany Corp.	5/ 9/69	6/ 4/69	(123.)
1000 Amer. Hosp. Supply.	5/16/69	6/ 4/69	(120.)
1000 AMF	5/16/69	6/ 4/69	(2,769.)

Complaint

A-14

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1000 Amer. Smelt & Refin.	5/16/69	6/ 4/69	(\$ 3,326.)
1000 Chromalloy Amer.	5/16/69	6/ 4/69	(5,897.)
1000 Cox Broadcasting	5/14/69	6/ 4/69	(1,831.)
1000 Gulf & Western Ind.	5/16/69	6/ 4/69	(4,924.)
1000 Leesona Corp.	5/ 9/69	6/ 4/69	(3,059.)
1000 Litton Industries	5/ 7/69	6/ 4/69	(4,429.)
1000 Santaff Ind.	5/16/69	6/ 4/69	(2,393.)
1000 Xtra Inc.	5/12/69	6/ 6/69	(4,835.)
1000 AMK Corp.	5/16/69	6/11/69	(5,983.)
1000 Eckero Drugs	5/28/69	6/12/69	(3,149.)
1000 Kinney Nat'l Ser.	5/16/69	6/18/69	(2,328.)
1000 Ampex Corp.	5/16/69	6/19/69	(942.)
1000 Chrysler	6/14/69	6/25/69	(731.)
1000 Columbia Broadcasting	6/20/69	6/26/69	(995.)
1000 Levin Townsend Comp.	6/ 4/69	7/ 7/69	(3,816.)
1000 Ogden Corp.	6/17/69	7/10/69	(6,058.)
1000 Ling Temco Vought	9/ 2/69	9/ 4/69	(3,084.)
A.M.K. Corp.	11/ 5/69	2/ 4/70	(2,950.)
Addressograph Multigraph	11/20/69	2/ 5/70	(10,404.)
Alleghany Corp.	11/ 5/69	2/ 5/70	(6,007.)
Amerada Hess Corp.	11/ 6/69	2/ 6/70	(5,661.)
American Smelting & Refining	11/17/69	2/ 4/70	(1,540.)
Atlantic Richfield	11/17/69	2/ 5/70	(14,368.)
Canada Pacific	11/ 5/69	2/ 5/70	(3,447.)
Chromalloy Amer. Corp.	1/28/70	2/ 9/70	(3,819.)
Chrysler Corp.	11/17/69	2/ 5/70	(20,103.)
Gulf & Western Industries	11/17/69	2/ 5/70	(12,786.)
Illinois Central Ind.	11/ 5/69	2/ 5/70	(4,002.)

Complaint

A-15

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
Kaiser Alum.	12/ 9/69	2/ 4/70	(\$ 4,475.)
Kinney National	12/ 9/67	2/ 4/70	(1,700.)
Leesona Corp.	11/20/69	2/ 6/70	(23,273.)
Ling Temco	11/20/69	2/ 6/70	(24,399.)
Litton Industries	11/20/69	2/ 5/70	(27,622.)
National General Corp.	11/ 5/69	2/ 5/70	(5,070.)
Northrop Corp.	11/ 5/69	2/ 5/70	(4,913.)
Northwest Industries	11/ 5/69	2/ 5/70	(6,854.)
Ogden Corp.	11/20/69	2/ 5/70	(17,406.)
Penn Central Transp. Co.	11/20/69	2/ 5/70	(10,277.)
Raytheon Co.	11/20/69	2/ 5/70	(21,985.)
Republic Corp.	11/26/69	2/ 5/70	(13,442.)
Reynolds Metals	11/20/69	2/ 5/70	(7,348.)
Royal Crown Cola	11/ 5/69	2/ 5/70	(2,553.)
St. Regis Paper	11/20/69	2/ 5/70	(7,189.)
Santa Fe International Corp.	1/14/70	2/ 5/70	(21,431.)
Teledyne Inc.	1/..9/70	2/ 6/70	(10,650.)
T.W.A.	11/ 5/69	2/ 5/70	(8,026.)
Addressograph Multigraph	10/14/69	2/ 5/70	(7,043.)
American Smelting & Refining	1/ 6/70	2/ 4/70	(620.)
Atlantic Richfield	10/14/69	2/ 5/70	(8,551.)
Avnet Inc.	10/14/69	2/ 4/70	(4,062.)
Chromalloy Amer. Corp.	1/ 6/70	2/ 4/70	(1,210.)
Chrysler Corp.	10/14/69	2/ 4/70	(12,829.)
Cox Broadcasting	10/14/69	2/ 4/70	(1,246.)
Gulf & Western	10/14/69	2/ 5/70	(4,132.)
Kinney National Service	10/14/69	2/ 4/70	(521.)
Leesona Corp.	10/14/69	2/ 5/70	(6,740.)

Complaint

A-16

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
Ling Temco	10/14/69	2/ 5/70	(\$ 12,581.)
Litton Industries	1/ 6/70	2/ 5/70	(6,494.)
Ogdon Corp.	10/14/69	2/ 5/70	(5,917.)
Raytheon Co.	10/14/69	2/ 5/70	(7,070.)
Republic Corp.	10/15/69	2/ 4/70	(6,297.)
Republic Corp.	1/ 9/70	2/ 5/70	(2,429.)
Reynolds Metals	10/15/69	2/ 4/70	(3,315.)
500 Dennison Mfg. Co.	3/10/70		{ 142.)
500 Avnet Inc.	3/10/70		(92.)
500 Allegheny Corp.	3/10/70		(90.)
500 Allegheny Corp.	3/10/70		(90.)
500 Trans World Airlines Inc.	3/ 9/70		(139.)
500 Santa Fe Industries	3/ 9/70		(157.)
500 Republic Corp.	3/ 9/70		(136.)
200 Columbia Broadcasting Sys.	3/ 9/70		(82.)
500 Chrysler Corporation	3/ 9/70		(163.)
500 Chromalloy American Corp. Del	3/ 9/70		(166.)
500 AMK Corp.	3/ 9/70		(162.)
200 Teledyne Inc. Prospectus Issue	3/10/70		(64.)
300 Teledyne Inc. Prospectus Issue	3/10/70		(96.)
500 Kaiser Industries Corp.	3/10/70		(136.)
			<u>(\$577,898.)</u>

AMENDED COMPLAINT, DATED 4/17/72

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CANDACE VAN ALEN,

Plaintiff,

-against-

DOMINICK & DOMINICK INCORPORATED and
PAUL deGIVE,

Defendants.
-----X

71 CIV. 5438 HT

AMENDED COMPLAINT

Plaintiff for her amended complaint, by her attorneys Kamerman & Kamerman, alleges as follows:

1. This case arises under the Securities Exchange Act of 1934, 15 U.S.C. paragraph 78 (the "Act"), in particular paragraphs 10 and 20 of the Act, 15 U.S.C. paragraphs 78j and 78t, and the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder. Jurisdiction is based upon the Act and particularly upon paragraph 27 thereof, 15 U.S.C. 78aa.

2. Defendant Dominick & Dominick Incorporated ("Dominick") is and was at all times hereinafter mentioned a corporation doing business as stock brokers, with its principal place of business located at 14 Wall Street, New York, New York.

3. Defendant Paul deGive ("deGive") is and was at all times hereinafter mentioned an employee of defendant Dominick and as such was its registered representative who dealt with plaintiff and was designated and directed by said defendant to deal and trade for plaintiff, and the acts and omissions of deGive herein alleged were in the course of his employment and within the scope of his authority.

- 4. Beginning or or about February 10, 1969, and continuing thereafter to about March 31, 1970, defendants used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities in contravention of the Act and Rule 10 b-5 of the Securities and Exchange Commission. Such use and employment of manipulative and deceptive devices and contrivances involved the use of means and instrumentalities of Interstate Commerce and the mails to effect transactions through the medium of members of national securities exchanges in securities registered on national securities exchanges.

5. During the period beginning February 10, 1969 and continuing until about March 31, 1970, defendants in violation of the Act and the Rules and Regulations thereunder, by the use of means and instrumentalities of Interstate Commerce and the mails, in connection with the purchase and sale of securities registered on national securities exchanges -

- a) employed devices, schemes and artifices to defraud;
- b) engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon plaintiff;
- c) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.

6. Such manipulative and deceptive devices and contrivances, schemes, statements, acts and practices included, during the period February 10, 1969 to about March 31, 1970, among other things, grossly and unfairly churning plaintiff's securities accounts by making or causing to be made 267 separate purchases and sales of securities as set forth in Schedule A, for the account of plaintiff in accounts which she maintained at Dominick

and elsewhere, over which accounts plaintiff had theretofore granted to defendants authority and control to deal with at their discretion but for her benefit.

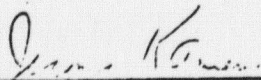
- 7. Defendants' purpose in making or causing to be made the said 267 transactions was primarily to create commissions, fees and other income for themselves rather than to benefit plaintiff, and in making or causing the said transactions to be made, defendants recklessly disregarded plaintiff's welfare and the purpose for which she had entrusted to defendants authority and control over her security accounts.

8. As a result of the said 267 transactions, defendants charged or caused to be charged, and plaintiff paid, fees, costs, state taxes, commissions and interest in excess of \$76,000.00 which sums were paid to defendants and others, and defendants neglected and failed to inform plaintiff that the aforesaid purchase and sale transactions were primarily made for the purpose of producing fees, costs, commissions and other income for defendants rather than in plaintiff's behalf and for her benefit.

9. As a further result of the said 267 purchase and sale transactions which were made or caused to be made by defendants for their own gains and profits rather than for plaintiff's benefit, plaintiff incurred losses and expenses totalling \$616,898.00.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally in the sum of \$616,898.00 with interest, together with the costs and disbursements of this action.

KAMERMAN & KAMERMAN

By: 
Jerome Kamerman, Member of Firm

Attorneys for Plaintiff
500 Fifth Avenue
New York, New York 10036
Telephone: 244-5245

SCHEDULE "A"
ATTACHED TO AMENDED COMPLAINT

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1000 Amer. South African Inv.	11/13, 12/5/68	2/11/69	(\$ 6,412.)
1000 Amer. South African Inv.	11/13/68	4/30/69	(1,914.)
1000 Campbell Red Lakes	11/13/68	4/30/69	(947.)
1000 Benguet Cons. Inc.	12/ 5/68	2/11/69	(1,506.)
1000 Campbell Red Lakes	12/ 5/68	2/11/69	(4,401.)
1000 Homestake Mining Corp.	12/ 5/68	2/11/69	(4,567.)
2000 Homestake Mining Corp.	12/ 5/68	4/30/69	(6,228.)
1000 International Mining Corp.	12/ 5/68	2/11/69	(2,283.)
1000 Homestake Mining Corp.	1/13/69	3/2 /69	(6,125.)
1000 American Hosp. Sup. Corp.	2/10/69	2/20/69	(1,736.)
1000 Chromalloy American Corp.	2/10/69	2/20/69	(5,827.)
1000 Chrysler Corp.	2/10/69	2/20/69	(2,922.)
1000 Eastern Airlines Inc.	2/10/69	2/20/69	(2,946.)
1000 Lear Siegler Inc.	2/10/69	2/20/69	(3,027.)
1000 Republic Steel	2/10/69	2/20/69	(5,351.)
1000 Reynolds Metals	2/10/69	2/20/69	(4,152.)
1000 Sante Fe Industries	2/10/69	2/20/69	(2,534.)
1000 Texas Gulf Sulphur	2/10/69	2/20/69	(4,435.)
1000 Trans World Airlines	2/10/69	2/20/69	(3,486.)
500 Chromalloy American Corp.	2/11/69	2/18/69	(3,446.)
500 American Hosp. Sup. Corp.	2/12/69	2/18/69	(821.)
500 Chrysler Corp.	2/12, 14/69	2/18/69	(1,656.)
500 Delta Airlines	2/12/69	2/18/69	(1,409.)
500 Eastern Airlines	2/12/69	2/18/69	(1,676.)
500 Lear Siegler Inc.	2/12/69	2/18/69	(1,221.)
500 Leesona Corp.	2/12/69	2/18/69	(2,479.)
500 Lukens Steel Co.	2/12/69	2/18/69	(1,295.)

Schedule "A", attached to Amended Complaint

A-21

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff Damages</u>
500 Ogden Corp.	2/12/69	2/18/69	(\$ 301.)
400 Reynolds Metals	2/12/69	2/18/69	(1,441.)
500 Santa Fe Industries	2/12/69	2/18/69	(1,841.)
500 Texas Gulf Sulphur	2/12/69	2/18/69	(1,444.)
500 Trans World Airlines-Warrants	2/12/69	2/18/69	(2,567.)
500 U. S. Steel	2/12/69	2/18/69	(2,445.)
1000 Technicolor Inc.	2/13/69	2/18/69	(1,279.)
300 Addressograph	4/30/69	5/26/69	(597.)
500 Addressograph	4/30/69	5/27/69	(1,103.)
1000 Allegheny Corp.	4/30/69	5/27/69	(60.)
500 American Hosp. Sup. Corp.	4/30/69	5/27/69	(140.)
1000 American Hosp.. Sup. Corp.	4/30/69	5/27/69	(120.)
1000 American Mach. & Foundary	4/30/69	5/27/69	(2,791.)
1000 American Mach. & Foundary	4/30/69	5/27/69	(2,769.)
1000 American Smelt & Refining	4/30/69	5/27/69	(3,326.)
500 AMK	4/30/69	5/27/69	(2,323.)
1000 AMK	4/30/69	5/27/69	(5,983.)
500 AMPLEX	4/30/69	5/27/69	(299.)
1000 AMPLEX	4/30/69	5/27/69	(942.)
500 Chromalloy American Corp.	4/30/69	5/27/69	(2,268.)
1000 Chromalloy American Corp.	4/30/69	5/27/69	(5,897.)
1000 Chrysler Corp.	4/30/69	5/27/69	(731.)
1000 Columbia Broadcasting	4/30/69	5/27/69	(995.)
500 Cox Broadcasting	4/30/69	5/27/69	(332.)
1000 Cox Broadcasting	4/30/69	5/27/69	(1,831.)
1000 Eckerd Drugs	4/30/69	5/27/69	(3,343.)
500 Gulf & Western Ind.	4/30/69	5/27/69	(2,626.)

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1000 Gulf & Western Ind.	4/30/69	5/27/69	(\$ 4,924.)
500 Kinney National Service	4/30/69	5/27/69	(232.)
1000 Kinney National Service	4/30/69	5/27/69	(2,328.)
500 Leeson Corp.	4/30/69	5/27/69	(908.)
1000 Leeson Corp.	4/30/69	5/27/69	(3,059.)
500 Ling Temco Vought	4/30/69	5/27/69	(1,592.)
1000 Ling Temco Vought	4/30/69	5/27/69	(3,084.)
400 Litton Ind.	4/30/69	5/27/69	(1,270.)
1000 Litton Ind.	4/30/69	5/27/69	(4,429.)
1000 Ogden Corp.	4/30/69	5/27/69	(5,644.)
1000 Ogden Corp.	4/30/69	5/27/69	(6,061.)
500 Santa Fe Ind.	2/14/69	5/27/69	(4,078.)
1000 Santa Fe Ind.	4/30/69	5/27/69	(2,393.)
1000 Texas Gulf Sulphur	4/30, 5/15/69	5/27/69	(529.)
500 Xtra Inc.	4/30/69	5/27/69	(635.)
1000 Levin Townsend Comp.	5/ 5/69	5/27/69	(3,816.)
1000 Xtra Inc.	5/ 5/69	5/27/69	(4,835.)
200 Addressograph	10/14/69	1/29/70	(7,043.)
300 Atlantic-Richfield	10/14/69	1/29/70	(8,551.)
500 Atlantic-Richfield	10/14/69	1/29/70	(14,368.)
1000 Avnet Inc.	10/14/69	1/28/70	(4,062.)
1000 Chromalloy Amer. Corp.	10/14/69	2/ 2/70	(2,623.)
1000 Chrysler-Corp.	10/14, 15/69	1/28/70	(12,829.)
1500 Chrysler Corp.	10/14, 15/69	1/29/70	(20,103.)
500 Cox Broadcasting	10/14/69	1/28/70	(1,240.)
500 Gulf & Western Ind.	10/14/69	1/29/70	(4,132.)

Schedule "A", attached to Amended Complaint

A-23

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1500 Gulf & Western Ind.	10/14,15/69	1/29/70	(\$12,786.)
500 Kinney National Service	10/14/69	1/28/70	(521.)
1000 Kinney National Service	10/14/69	1/28/70	(1,529.)
1000 Levin-Townsend	10/14/69	1/29/70	(15,647.)
500 Leeson Corp.	10/14/69	1/29/70	(6,740.)
1500 Leeson Corp.	10/14,15/69	1/30/70	(23,273.)
500 Ling Tanco Vought	10/14/69	1/29/70	(12,581.)
1000 Ling Tanco Vought	10/14/69	1/30/70	(24,399.)
1000 Litton Ind.	10/14/69	1/29/70	(27,622.)
500 Ogden Corp.	10/14/69	1/29/70	(5,917.)
1500 Ogden Corp.	10/14/69	1/29/70	(17,406.)
500 Raytheon Co.	10/14/69	1/29/70	(7,070.)
1500 Raytheon Co.	10/14,15/69	1/29/70	(21,985.)
2000 Republic Corp.	10/14,15/69	1/29/70	(13,442.)
300 Addressograph	10/15/69	1/29/70	(10,404.)
1500 American Smelt & Refin.	10/15/69	1/28/70	(1,540.)
500 Chromalloy American Corp.	10/15/69	1/28/70	(1,195.)
800 Cox Broadcasting	10/15/69	1/28/70	(5,816.)
1000 Kaiser Ind.	10/15/69	1/28/70	(3,300.)
1000 Kaiser Alum.	10/15/69	1/28/70	(4,475.)
1000 Penn Central Transp.	10/15/69	1/29/70	(10,277.)
500 Republic Corp.	10/15/69	1/28/70	(3,269.)
500 Reynolds Metals	10/15/69	1/28/70	(3,315.)
1000 Reynolds Metals	10/15/69	1/29/70	(7,348.)
1000 St. Regis Paper	10/15/69	1/29/70	(7,189.)
500 Santa Fe International	10/15/69	1/29/70	(10,268.)
1000 Santa Fe International	10/15/69	1/29/70	(21,431.)

Schedule "A", attached to Amended Complaint

A-24

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
1000 Allegheny Corp.	10/30/69	1/29/70	(\$ 6,007.)
500 Amerada Hess	10/30/69	1/29/70	(5,661.)
500 AMK	10/30/69	1/29/70	(2,950.)
300 Canada Pacific	10/30/69	1/29/70	(3,447.)
500 Illinois Central Ind.	10/30/69	1/29/70	(4,002.)
500 Leeds & Northrup Corp.	10/30/69	1/29/70	(4,913.)
500 National General Corp.	10/30/69	1/29/70	(5,070.)
1000 Northwest Ind.	10/30/69	1/29/70	(6,854.)
1000 Royal Crown Cola	10/30/69	1/29/70	(2,553.)
1000 Teledyne Inc.	10/30/69	1/30/70	(10,650.)
1000 Trans World Airlines Warrants	10/30/69	1/29/70	(8,026.)
500 American Smelt & Refin.	12/29/69	1/28/70	(620.)
500 Chromalloy American Corp.	12/29/69	1/28/70	(1,210.)
500 Litton Ind.	12/29/69	1/29/70	(6,494.)
500 Republic Corp.	12/29/69	1/28/70	(3,028.)
500 Republic Corp.	1 / 2/70	1/29/70	(2,429.)
500 AMK	3/ 2/70		(162.)
500 Chromalloy American Corp.	3/ 2/70		(166.)
500 Chrysler Corp.	3/ 2/70		(163.)
200 Columbia Broadcasting	3/ 2/70		(82.)
500 Republic Corp.	3/ 2/70		(136.)
500 Santa Fe Ind.	3/ 2/70		(157.)
500 Trans World Airlines Inc.	3/ 2/70		(139.)
500 Allegheny Corp.	3/ 3/70		(90.)
500 Allegheny Corp.	3/ 3/70		(90.)
100 American Smelting & Refining	3/ 3/70		(36.)

Schedule "A", attached to Amended Complaint

A-25

SCHEDULE "A"
ATTACHED TO COMPLAINT

<u>Security</u>	<u>Purchase Date</u>	<u>Sales Date</u>	<u>Plaintiff's Damages</u>
200 AMK Corp.	3/3/70		(\$ 65.)
500 Avnet Inc.	3/3/70		(92.)
200 Chromalloy American Corp.	3/3/70		(67.)
200 Chrysler Corp.	3/3/70		(66.)
500 Dennison Mfg. Co.	3/3/70		(142.)
200 Eastern Airlines Inc.	3/3/70		(49.)
500 Kaiser Ind. Prosp. Issue	3/3/70		(136.)
200 Santa Fe Industries	3/3/70		(63.)
200 Teledyne Inc. Prosp. Issue	3/3/70		(64.)
300 Teledyne Inc. Prosp. Issue	3/3/70		(96.)
100 Trans World Airlines Inc.	3/3/70		(27.)
			<u>(\$616,898.)</u>

SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CANDACE VAN ALLEN,

Plaintiff,

71 Civ. 5438

-against-

SECOND AMENDED COMPLAINT

DOMINICK & DOMINICK INCORPORATED and
PAUL deGIVE,

Defendants.
-----X

Plaintiff for her second amended complaint by her attorneys,
Kamerman & Kamerman, alleges as follows:

COUNT I

1. This action arises under the Securities Exchange Act of 1934, Chapter 4, Stat. 881, 15 U.S.C. 78j and the rules and regulations promulgated thereunder as hereinafter more fully appears. Jurisdiction is based upon the said Act, particularly Paragraph 27 thereof (15 U.S.C. 78aa).

2. At all times material hereto defendant, DOMINICK & DOMINICK INCORPORATED ("Dominick"), was engaged in business as stock brokers with its principal office at 14 Wall Street, New York, New York and defendant, PAUL deGIVE ("deGive"), was an employee of Dominick.

3. Prior to 1969, plaintiff gave defendants discretionary control over her securities account at Dominick and over her custody account at the Bank of New York. In October, 1969, plaintiff gave defendants discretionary control over her custody account at the First National City Bank.

4. During the period beginning February 10, 1969, and con-

tinuing until April 3, 1970, defendants in violation of the Securities Exchange Act of 1934 and the rules and regulations thereunder, particularly Reg. §240.10b-5, by the use of interstate telephone in interstate commerce and the United States mails, in connection with the purchase and sale of securities registered on national securities exchanges, employed schemes to defraud, and engaged in acts and a course of conduct which operated as a fraud and deceit upon plaintiff by churning plaintiff's securities account and custody accounts and by purchasing securities which were unsuitable for plaintiff.

5. These acts took the form of defendants making 285 purchases or sales of securities in the accounts which plaintiff maintained at Dominick, at the Bank of New York and at the First National City Bank.

6. As a result of the said purchases and sales of securities which defendants made for plaintiff, plaintiff incurred net losses and expenses totalling \$599,046.00.

COUNT II

7. Plaintiff is a citizen of the U.S. Virgin Islands. Defendant, DOMINICK & DOMINICK INCORPORATED ("Dominick"), is a corporation incorporated under the laws of the State of Delaware and has its principal office at 14 Wall Street, New York, New York. Defendant, PAUL deGIVE ("deGive"), was at all times material hereto an employee of Dominick and a citizen of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

8. Plaintiff incorporates by reference in this count, the allegations of Paragraph "3" of Count I.

9. During the period February 10, 1969, to April 3, 1970, defendants, through fraud, misrepresentations and by omitting to state

material facts, induced plaintiff to permit defendants to continue to exercise discretionary control over plaintiff's securities and custody accounts and to purchase and sell securities in those accounts with the intent to deceive and defraud plaintiff, through the following acts:

(a) Defendants represented that they had and would continue to abide by the rules of the New York Stock Exchange and of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission and the Securities Exchange Act of 1934 in their handling of plaintiff's securities and custody accounts.

(b) Defendants represented to plaintiff that they had developed and perfected a system insuring profits in the purchase and sale of securities which would be applied to the purchase and sale of securities for her accounts and would result in profits to her.

(c) Defendants failed to tell plaintiff that orders to purchase and sell securities for plaintiff's accounts would not be reviewed and approved by any authorized person before they were placed by defendant deGiv.

(d) Defendants failed to tell plaintiff that they would not use due diligence to learn essential facts relative to each order executed on behalf of plaintiff.

(e) Defendants failed to tell plaintiff that they would not supervise diligently plaintiff's accounts at Dominick, at the Bank of New York and at the First National City Bank, over which accounts defendants had and intended to exercise discretionary control.

10. Defendants knew that the representations as above alleged were untrue or were recklessly made with a wanton disregard for the truth

and were made by defendants with the intention that plaintiff should rely thereon. The material facts alleged above which defendants failed to tell plaintiff were facts known to defendants and the failure to disclose was intended to deceive plaintiff and induce her to continue to permit defendants to purchase and sell securities in her accounts.

11. As a result of the misrepresentations and omissions by defendants and plaintiff's reliance upon the said misrepresentations, plaintiff permitted defendants to make 285 purchases or sales of securities in her accounts as the result of which she suffered net losses and expenses totalling \$599,046.00.

COUNT III

12. Plaintiff incorporates by reference in this count, the allegations of Paragraphs "1", "2" and "4" of Count I.

13. At all times material hereto, defendants had and exercised discretionary control over plaintiff's securities account at Dominick.

14. The fraudulent acts of defendants took the form of the making of 137 purchases or sales of securities at the instance of defendants for plaintiff's account at Dominick, which purchases and sales were excessive in amount in the light of the size and purpose of plaintiff's account and also involved unsuitable securities for plaintiff in the light of her investment purposes which were known to defendants.

15. As a result of the said 137 purchases and sales, plaintiff incurred net losses and expenses totalling \$170,112.00.

COUNT IV

16. Plaintiff incorporates by reference in this count, the allegations of Paragraphs "1", "2" and "4" of Count I.

17. At all times material hereto defendants had and exercised discretionary control over plaintiff's securities account at Dominick and over plaintiff's custody account at the Bank of New York.

18. The fraudulent acts of defendants took the form of in and out trading, resulting in 136 separate purchases and sales of securities in plaintiff's securities account at Dominick and custody account at the Bank of New York, and these transactions were unsuitable for plaintiff in the light of her investment purpose which was known to defendants.

19. As the result of the said transactions plaintiff incurred net losses and expenses totalling \$146,270.00.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally as follows: on the first count in the sum of \$599,046.00 with interest; on the second count in the sum of \$599,046.00 with interest plus punitive damages in the sum of \$1,000,000.00; on the third count in the sum of \$170,112.00 with interest; on the fourth count in the sum of \$146,270.00 with interest, all together with the costs and disbursements of this action.

KAMERMAN & KAMERMAN

By Jerome Kamerman, Member of Firm
Attorneys for Plaintiff
Office & P.O. Address
500 Fifth Avenue
New York, New York 10036
Telephone: 244-5245

REPORT OF UNITED STATES MAGISTRATE
(RE JURY DEMAND)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CANDACE VAN ALLEN,

Plaintiff,

-v-

DOMINICK & DOMINICK, INCORPORATED
and PAUL deGIVE,

Defendants.

-----X

REPORT OF
UNITED STATES
MAGISTRATE

71 Civ. 5438 (LP)

TO THE HONORABLE LAWRENCE W. PIERCE, U.S.D.J.:

This report relates to a motion, heretofore filed on October 30, 1973 on behalf of the defendants, for an order striking a jury demand by plaintiff dated December 1, 1972. By order dated December 11, 1973, the motion was referred to me for hearing and recommendation, pursuant to 28 U.S.C. 636 and General Rule 35 of the General Rules of this Court.

The motion is grounded upon the provisions of Rule 38 F.R.C.P., which provides, in substance, that a plaintiff may file a jury demand either simultaneously with the filing of the complaint, or, in the alternative "not later than ten days after the service of the last pleading directed to such issues". The Rule further provides that failure to serve such demand constitutes a waiver of trial by jury.

The original complaint in this case was filed in December

1971 and an answer filed in January 1972. No jury demand had been made by any party up to that point, and in fact the plaintiff's initial jury demand was not filed until December 1, 1972, as an adjunct to plaintiff's "second amended complaint".

The motion to strike the jury demand is opposed by plaintiff, first, on the ground that the motion itself is "untimely" and secondly, on the ground that the second amended complaint raises new issues, thereby entitling plaintiff to a jury trial, at least with respect to the alleged "new" issues.

In my view, the contention that the motion to strike the jury demand is "untimely" cannot be sustained. The provisions in Rule 38 providing that the right to a jury is "waived" absent the proper and timely demand therefor cannot be rendered inoperative by reason of a mere delay on the part of opposing counsel in calling the Court's attention to the failure to file a timely jury demand. There is no provision in the Rules of which I am aware which specify a time limit within which a motion to strike a jury demand may be made. In my opinion, in the absence of a timely jury demand it would be improper for this Court to allow a jury trial even in the absence of a motion to strike a late jury demand.

Turning to the second ground of opposition to the motion - namely that the jury demand is proper because of the "new"

issues raised in the second amended complaint - I am persuaded by the arguments contained in the memorandum of defendants in support of the motion to the effect that the second amended complaint in no way changes the basic issues in the case and that therefore the jury demand is improper.

The original complaint in effect charges the defendants with improper churning of plaintiff's brokerage account. Such charge is, in effect, a charge of wrongful and deceitful conduct and is clearly in the nature of fraud. The mere addition by plaintiff of a new cause of action in common law fraud does not, as I see it, so change the nature of this action as to justify a belated request for a jury trial.

It is accordingly recommended that the defendants' motion be granted.

Copies of this report have been mailed this date to counsel for the parties, who are hereby instructed that any objections to this report must be filed in your chambers not later than ten days from the date hereof.

The following papers, considered by me on this motion, are forwarded herewith:

1. Defendants' notice of motion filed October 30, 1973;
2. Memo in support of said motion filed October 30, 1973;
3. Opposing affidavit filed October 12, 1973;

Report of United States Magistrate
(re Jury Demand)

A-34

4. Opposing memo of law filed November 12, 1973;
5. Defendants' reply memorandum, not yet filed;
6. Letter to you from defendants' counsel (and enclosure)
dated November 14, 1973.

Dated: March 21, 1974.

Respectfully submitted,

HAROLD J. RABY
UNITED STATES MAGISTRATE

ENDORSEMENT ORDER (RE JURY DEMAND),
DATED 4/18/74

71 Civ. 5433, Candace Van Allen v. Dominick & Dominick,
and Paul deGiva

ENDORSEMENT re jury demand

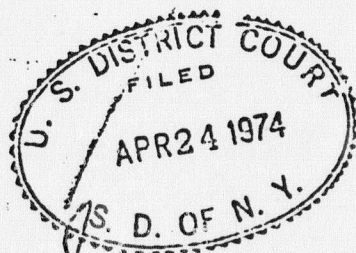
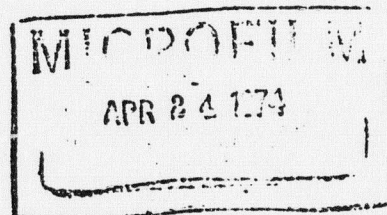
This motion by defendant to strike the jury demand which accompanied plaintiff's Second Amended Complaint was referred to Magistrate Raby for hearing and recommendation pursuant to 28 U.S.C. §636 and General Rule 35 of this Court. The Magistrate, by Report dated March 21, 1974, has recommended that the motion be granted.

Having carefully reviewed the moving and opposing papers, including those filed in opposition to the Magistrate's Report, this Court hereby adopts the Magistrate's recommendation.

Defendant's motion is hereby granted. Plaintiff's demand for jury trial is hereby stricken.

SO ORDERED.

Dated: New York, New York
April 18, 1974



Lawrence W. Pierce

LAWRENCE W. PIERCE
U. S. D. J.

PAGE 9 OF PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT

of the contract. Therefore, plaintiff is entitled to summary judgment against Dominick.

Since there is no dispute as to the question of a breach, the main problem is measure of damages. Plaintiff concedes that it is impossible to determine to what extent losses would have been avoided had Dominick obeyed the NYSE rules. However, as stated in Williston on Contracts, §1346:

"Though the fact that the plaintiff's damage is uncertain in amount or even that it is uncertain that substantial damage has been caused should not deprive the plaintiff of a right to compensation for the loss of the defendant's performance which would have given the plaintiff a chance to make profit or avoid damage . . . Where a breach of contract involves deprivation of a chance which has value in a business sense, a just reluctance will be felt by most courts to deny altogether the recovery of substantial damages."

The New York Courts have held that a wrongdoer may not escape liability solely because the ordinary standards for proving damages are not available. See, Dunkel v. McDonald, 70 N.Y.S. 2d 653, 657 (1st Dept. 1947); Alexander's Department Stores v. Ohrbach's, Inc., 269 App. Div. 321, 56 N.Y.S. 2d 173, 179 (1st Dept. 1945); MacGregor v. Watts, 254 App. Div. 904, 5 N.Y.S. 2d 525, 526 (2d Dept. 1938). New York Courts will award damages for breach of contract even though the amount of the damages is uncertain. Wakeman v. Wheeler & Wilson M'f'g Co., 101 N.Y. 205, 209, 4 N.E. 264, 54 Am. Rep. 676 (1886); Green v. Pure Oil Co., 285 N.Y.S. 432 (2d Dept. 1936); Turner v. American Metal Co., 36 N.Y.S. 2d 356, 387 (S. Ct., N.Y. County, 1942).

EXCERPTS FROM MEMORANDUM OF DEFENDANTS,
DATED AUGUST 1, 1974, IN OPPOSITION TO
PLAINTIFF'S MOTIONS FOR LEAVE TO AMEND
AND FOR SUMMARY JUDGMENT AGAINST DEFEND-
ANT DOMINICK & DOMINICK

(Pages A-38 to A-44 following)

"Q. The person designated by Dominick to learn any facts relative to each order to buy or sell in Candace Van Alen's account at Dominick.

"A. I'm afraid I don't understand what you are getting at. I don't understand that.

* * *

"Q. I would like you to look at paragraph 1 of Rule 405 (handing to the witness).

"A. Yes?

"Q. Now, my questions were really addressed to this rule, which requires, as I understand it, a stock exchange firm to designate some person to use due diligence to learn essential facts relative to a customer, relative to every order and every cash or margin account, and every person holding a power of attorney.

"A. You're asking me was I the person?

"Q. Yes.

"A. I would say I would have to be, yes."
(Mitchell Deposition, pp. 17-18; emphasis added).

And while the supporting affidavit (§12) indicated that Mr. Mitchell answered no to certain questions cast in conclusory terms with respect to learning facts relating to plaintiff's account at Dominick, it fails to disclose that the testimony of Mr. Mitchell indicates that in fact he did take such steps and, indeed, describes them (see Mitchell Transcript, pp. 13-15). It also fails to disclose that each discretionary order was reviewed by Mr. Mitchell or one of his staff on

the day following the trade (see pp. 27 to 29, infra) and that Mr. Mitchell had knowledge of the financial position of plaintiff, knew that plaintiff had maintained an account with Mr. deGive at Dominick for years prior to 1969, and knew that Mr. deGive followed a technical system while trading in her behalf. (Mitchell Deposition, pp. 37-43).

Furthermore, it is undisputed that Paul deGive, who was an officer of Dominick (Senior Vice President) throughout the period in question, was familiar with plaintiff and her financial resources.

2. Rule 408

(a) There Was Substantial Compliance With The Rule

Plaintiff also asserts that Dominick violated Rule 408(a).⁹ The supporting affidavit indicates that plaintiff is charging that Dominick failed to comply with the requirement

⁹ During the period plaintiff has chosen to complain of, Rule 408(a) provided:

"No member, allied member or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining the written authorization of the customer.

"Where a member, allied member, or employee of a member organization exercises discretionary power in a customer's account, each discretionary order shall be approved and initialled on the day entered by a member, allied member or manager designated with written authority by a member or allied member to do so. Every order entered on a discretionary basis by a member, allied member or employee of a member organization must be identified as discretionary accounts shall receive frequent appropriate supervisory reviews by a member or allied member who is not exercising the discretionary authority."

which calls for approval and initialling of each discretionary order by a member, allied member or manager, on the day entered. Dominick concedes that the order tickets were not initialled. But Dominick employed alternative procedures which were in substantial compliance with Rule 408.

Substantial compliance--particularly as to procedural acts--has long been recognized as a defense. Hadden v. Consolidated Edison Co., 34 N.Y.2d 88, 86, 356 N.Y.S.2d 249, 255, 312 N.E. 2d 445, 449 (1974); Jacobs & Youngs, Inc. v. Kent, 230 N.Y. 239, 129 N.E. 889 (1921); City of New York v. Skyway-Dyckman, Inc., 22 A.D.2d 506, 256 N.Y.S. 2d 840, (1st Dep't. 1965), appeal dismissed 16 N.Y. 2d 706, 261 N.Y.S. 2d 899, 209 N.E. 2d 555 (1st Dep't. 1965); United States for Use and Benefit of Browne & Byan Lumber Co. v. Mass. Bonding & Ins. Co., 303 F.2d 823 (2d Cir. 1962), cert. denied sub. nom.; Ove Gustavsson Contracting Co. v. United States for Use and Benefit of Browne & Byan Lumber Co., 371 U.S. 942, rehearing denied 372 U.S. 932; see G. Williston, Contracts §842 (3d Ed. 1962); 3A Corbin, Contracts §700 (2d Ed. 1960). The New York courts have specifically recognized this doctrine in an agency relationship. An agent who is in substantial compliance with the terms of instructions given by his principal is not in violation of the agreement. Parkhill v. Imlay, 15 Wend. 431 (1836).

The factors to be considered in determining exactly what amounts to substantial performance are identified in

Jacobs & Young v. Kent, supra. Judge Cardozo stated that the "liberal view" must be taken in deciding whether the performance is substantial. He went on to say:

"Where the line is to be drawn between the important and the trivial cannot be settled by a formula. 'In the nature of the case precise boundaries are impossible.' The same omission may take on one aspect or another according to its setting. Substitution of equivalents may not have the same significance in fields of art on the one side and in those of mere utility on the other. Nowhere will change be tolerated, however, if it is so dominant or pervasive as in any real or substantial measure to frustrate the purpose of the contract...The question is one of degree, to be answered, if there is doubt, by the triers of the facts, and, if the inferences are certain, by the judges of the law. We must weigh the purposes to be served, the desire to be gratified, the excuse for deviation from the letter, the cruelty of enforced adherence. Then only can we tell whether literal fulfillment is to be implied by law as a condition." 230 N.Y. 239 at 243, (Citations omitted).

Throughout the period in question Mr. deGive was a Vice President of Dominick who worked not out of one of Dominick's retail branches but out of its central office in New York. As a senior investment counselor and broker of long standing, who had never been subject to any sort of disciplinary proceeding, Mr. deGive was not regarded in the same light as a green salesman in a branch office. Nevertheless, deGive's trades for plaintiff were reviewed.

Mr. Thomas Mitchell was Director of Compliance for Dominick during the period put in issue by the complaint. It was Mr. Mitchell's responsibility to insure compliance with

NYSE Rules. Mr. Mitchell has testified that he believed that the supervision procedures at Dominick were sufficient to comply with the rules. Each day, either Mr. Mitchell or one of his assistants reviewed IBM runs listing all transactions executed on the previous day. (Mitchell Deposition, pp. 13-14). These runs were broken down by salesmen so that an individual review was made of all transactions ordered by Mr. deGive on the day after they were made. (Mitchell Deposition, p. 40). In addition, confirmation slips for all trades were reviewed on the day following the trade.¹⁰ Monthly statements were reviewed periodically. All transactions executed by defendant deGive for plaintiff's account were included in this review. In fact, Dominick had programed its discretionary accounts in such a way that they were identifiable as such to supervisory employees. (Mitchell Deposition, p. 26).

It should be noted that the rule calls for review of the trade on the day made but not necessarily before the trade is executed. The fact that the review of the trade took place on the following day rather than on the afternoon of the trade indicates substantial compliance with the rule's requirements. And certainly Mr. Mitchell's failure to initial a trade that he reviewed is a meaningless deviation.

¹⁰ Dominick's Supplementary Answers dated July 6, 1973 to Defendant's Interrogatories; Answer to Interrogatory 3d.

The daily review of all such transactions was conducted with an eye towards any unusual trading activity. *← but not churning type*
Thus, each order entered by Mr. deGive was promptly reviewed by supervisory personnel who were aware that the transactions were for a discretionary account. Dominick was, therefore, in substantial compliance with the letter of Rule 408 and was in full compliance with its spirit which seeks to provide for a prompt review of discretionary orders.

The procedures described above also substantially satisfied the provisions of Rule 408 quoted in paragraphs 14 and 15 of the supporting affidavit to the effect that every discretionary order must be identified as such at the time of entry and that discretionary accounts shall receive frequent supervisory review.

The plaintiff also alleges that defendant Dominick failed to comply with certain quoted provisions of the "Supplementary Material" to Rule 408. In the first place, it has been held that supplementary material is in the nature of interpretive guidelines and does not, itself, amount to a rule. DeRenzes v. Levy, 297 F. Supp. 998 (S.D.N.Y. 1969). Moreover, the lists of discretionary accounts referred to in paragraph 16 of Counsel's affidavit were, in fact, maintained with respect to plaintiff's account at Dominick since the IBM runs identify the subject accounts as discretionary. As for

the supplementary material quoted in paragraph 17 of the affidavit of plaintiff's counsel, it is true that Dominick did not inquire in writing of Mrs. Van Alen as to whether she wished to continue her discretionary account, but this was clearly an unnecessary detail since Mr. deGive was in frequent telephonic and mail communication with plaintiff (Watson Deposition, pp. 44-45), and since Mrs. Van Alen was kept fully informed of the discretionary transactions executed on her behalf. (See p. 11 , supra).

(b) The Purchase Of Securities in October 1969 And Their Sale in January 1970 Were Not Subject to Rule 408 Because They Were Not Made in the Exercise of A Discretionary Power

Plaintiff claims that Dominick violated Rule 408 with respect to "all 137" trades made in plaintiff's account at Dominick during the period of the complaint. (Proposed Third Amended Complaint ¶26). Yet Rule 408 by its terms applies only to "discretionary orders", and it is Dominick's position that trades accounting for approximately 70% of plaintiff's alleged loss (see p. 14 , supra) were not "discretionary". As mentioned, the plaintiff discussed the purchases in October and December 1969 with Mr. deGive and approved them prior to the time they were made.

(Plaintiff's Deposition in Van Alen v. First National City Bank (Barist Aff. Ex. 9); at pp. 176-177; deGive Deposition

PAGE 14 OF REPLY MEMORANDUM OF PLAINTIFF TO
DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO AMEND AND
FOR SUMMARY JUDGMENT

cause of action. Buttrey was limited to its facts. The same must be true of Landy v. F.D.I.C., supra, S.E.C. v. First Securities Co. of Chicago, supra, and Aetna Casualty and Surety Co. v. Paine, Webber, Jackson & Curtis, (1969 to 1970 Transfer Binder) CCH Fed. Sec. L. Rep. ¶92, 748 (N.D. Ill., 1970). Otherwise, the Courts would be severely crippling the effectiveness of NYSE Rule 405 and Rule 408. In fact, Landy stated that Colonial Realty was the genesis of the development of a statutory basis for implying private liability for violation of stock exchange rules. It must be remembered that Colonial Realty simply established broad guidelines for implying a cause of action. (358 F. 2d at 182.) These guidelines did not even mention fraud. The more reasonable reading of Buttrey, S.E.C. v. First Securities Co. of Chicago, Aetna and Landy would be that allegations of fraud are not required to state a cause of action under NYSE Rules 405 or 408. The plaintiff must show, as this plaintiff has done, that the nature of the rules in question and their place in the regulatory scheme require that a cause of action be implied for violations of the NYSE rules.

Although no case has been found by either party dealing with the question of whether a violation of NYSE Rule 408 gives rise to a cause of action, the rationale of the four previously noted cases should be applied. That is, Rule 408 was designed to prevent excessive trading in discretionary accounts, that being a specific attempt by the New York Stock Exchange to comply with the Securities Exchange Act of 1934 and S.E.C. regulations. (See P. memo at 17 to 18.)

ENDORSEMENT ORDER (RE LEAVE TO AMEND)
DATED NOVEMBER 19, 1974

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Date, Yours, etc.,

KAMERMAN & KAMERMAN
 Attorneys for
 Office and Post Office Address
 500 FIFTH AVENUE
 BOROUGH OF MANHATTAN NEW YORK, N. Y. 10036

To
 Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order of which the within is a true copy will be presented for endorsement to the Hon. one of the judges of the within named Court, at on the day of 19 at AL

Dated, Yours, etc.,

KAMERMAN & KAMERMAN
 Attorneys for
 Office and Post Office Address
 500 FIFTH AVENUE
 BOROUGH OF MANHATTAN NEW YORK, N. Y. 10036

To
 Attorney(s) for

71 Civ. 5438, CANDACE VAN ALLEN v. DOMINICK & DOMINICK, INC.
 and PAUL deGIVE

ENDORSEMENT ORDER

The motion herein for leave to amend the complaint pursuant to Rule 15(a) of the Fed.R.Civ.P. is hereby granted. That rule provides that such "leave shall be freely granted when justice so requires." While it is true that the plaintiff has been somewhat dilatory such delay by itself will not justify denial of the application. 6 Wright & Miller, Federal Practice & Procedure, §1488 at 438 (1971). Defendants' claim that they will be prejudiced in that they will be compelled to undergo "extensive new preparations" to defend against the new claim is unpersuasive. Indeed the argument is considerably weakened by the fact that the defendants have affirmatively demonstrated their ability to defend on the merits. Finally, the Court is not disposed to rule on the substantive merits of the new claim at this stage of the proceedings as the defendants would have it do. As another Court has stated: "Absent a claim . . . that is frivolous or patently insufficient, its substantive merits or lack thereof are not considered in a motion for leave to amend." Key Pharmaceuticals, Inc. v. Lowey, 54 F.R.D. 447, 449 n.5 (S.D.N.Y. 1972).

The motion for leave to file an amended complaint is hereby granted. Plaintiff's companion motion for summary judgment on the new claim will not be determined at this time since it is premature. The defendant will have 20 days from the service of the new pleading to answer or otherwise move with respect to it. Following that or at the expiration of the allotted time, the summary judgment motion will be deemed ripe for adjudication.

SO ORDERED.

Dated: New York, New York
 November 19, 1974

Lawrence W. Pierce
 LAWRENCE W. PIERCE
 U. S. D. J.

*used
 filed*

Nov 25 1974

SD of
 DISTRICT COURT
 FILED

PLAINTIFF'S THIRD AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CANDACE VAN ALLEN,

Plaintiff,

71 Civ. 5438

-against-

THIRD AMENDED COMPLAINT

DOMINICK & DOMINICK INCORPORATED and
PAUL deGIVE,

Defendants.

-----X

Plaintiff for her third amended complaint by her attorneys,
KAMERMAN & KAMERMAN, alleges as follows:

COUNT I

1. This action arises under the Securities Exchange Act of 1934, Chapter 4, Stat. 881, 15 U.S.C. 78j and the rules and regulations promulgated thereunder as hereinafter more fully appears. Jurisdiction is based upon the said Act, particularly Paragraph 27 thereof (15 U.S.C. 78aa).

2. At all times material hereto defendant, DOMINICK & DOMINICK INCORPORATED ("Dominick"), was engaged in business as stockbrokers with its principal office at 14 Wall Street, New York, New York and defendant, PAUL deGIVE (deGive"), was an employee of Dominick.

3. Prior to 1969, plaintiff gave defendants discretionary control over her securities account at Dominick and over her custody account at the Bank of New York. In October, 1969, plaintiff gave defendants discretionary control over her custody account at the First National City Bank.

4. During the period beginning February 10, 1969, and con-

tinuing until April 3, 1970, defendants in violation of the Securities Exchange Act of 1934 and the rules and regulations thereunder, particularly Reg. §240.10b-5, by the use of interstate telephone in interstate commerce and the United States mails, in connection with the purchase and sale of securities registered on national security exchanges, employed schemes to defraud, and engaged in acts and a course of conduct which operated as a fraud and deceit upon plaintiff by churning plaintiff's securities account and custody accounts and by purchasing securities which were unsuitable for plaintiff.

5. These acts took the form of defendants making 285 purchases or sales of securities in the accounts which plaintiff maintained at Dominick, at the Bank of New York and at the First National City Bank.

6. As a result of the said purchases and sales of securities which defendants made for plaintiff, plaintiff incurred net losses and expenses totalling \$599,046.00.

COUNT II

7. Plaintiff is a citizen of the U.S. Virgin Islands. Defendant, DOMINICK & DOMINICK INCORPORATED ("Dominick"), is a corporation incorporated under the laws of the State of Delaware and has its principal office at 14 Wall Street, New York, New York. Defendant, PAUL deGIVE ("deGive"), was at all times material hereto an employee of Dominick and a citizen of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

8. Plaintiff incorporates by reference in this count, the allegations of Paragraph "3" of Count I.

9. During the period February 10, 1969, to April 3, 1970, defendants, through fraud, misrepresentations and by omitting to state

material facts, induced plaintiff to permit defendants to continue to exercise discretionary control over plaintiff's securities and custody accounts and to purchase and sell securities in those accounts with the intent to deceive and defraud plaintiff, through the following acts:

(a) Defendants represented that they had and would continue to abide by the rules of the New York Stock Exchange and of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission and the Securities Exchange Act of 1934 in their handling of plaintiff's securities and custody accounts.

(b) Defendants represented to plaintiff that they had developed and perfected a system insuring profits in the purchase and sale of securities which would be applied to the purchase and sale of securities for her accounts and would result in profits to her.

(c) Defendants failed to tell plaintiff that orders to purchase and sell securities for plaintiff's account would not be reviewed and approved by any authorized person before they were placed by defendant deGiv.

(d) Defendants failed to tell plaintiff that they would not use due diligence to learn essential facts relative to each order executed on behalf of plaintiff.

(e) Defendants failed to tell plaintiff that they would not supervise diligently plaintiff's accounts at Dominick, at the Bank of New York and at the First National City Bank, over which accounts defendants had and intended to exercise discretionary control.

10. Defendants knew that the representations as above alleged were untrue or were recklessly made with a wanton disregard for the truth

and were made by defendants with the intention that plaintiff should rely thereon. The material facts alleged above which defendants failed to tell plaintiff were facts known to defendants and the failure to disclose was intended to deceive plaintiff and induce her to continue to permit defendants to purchase and sell securities in her accounts.

11. As a result of the misrepresentations and omissions by defendants and plaintiff's reliance upon the said misrepresentations, plaintiff permitted defendants to make 285 purchases or sales of securities in her accounts as the result of which she suffered net losses and expenses totalling \$599,046.00.

COUNT III

12. Plaintiff incorporates by reference in this count, the allegations of Paragraphs "1", "2" and "4" of Count I.

13. At all times material hereto, defendants had and exercised discretionary control over plaintiff's securities account at Dominick.

14. The fraudulent acts of defendants took the form of the making of 137 purchases or sales of securities at the instance of defendants for plaintiff's account at Dominick, which purchases and sales were excessive in amount in the light of the size and purpose of plaintiff's account and also involved unsuitable securities for plaintiff in the light of her investment purposes which were known to defendants.

15. As a result of the said 137 purchases and sales, plaintiff incurred net losses and expenses totalling \$170,112.00.

COUNT IV

16. Plaintiff incorporates by reference in this count, the

Plaintiff's Third Amended Complaint

A-51

allegations of Paragraphs "1", "2" and "4" of Count I.

17. At all times material hereto defendants had and exercised discretionary control over plaintiff's securities account at Dominick and over plaintiff's custody account at The Bank of New York.

18. The fraudulent acts of defendants took the form of in and out trading, resulting in 136 separate purchases and sales of securities in plaintiff's securities account at Dominick and custody account at the Bank of New York, and these transactions were unsuitable for plaintiff in the light of her investment purpose which was known to defendants.

19. As the result of the said transactions plaintiff incurred net losses and expenses totalling \$146,270.00.

COUNT V

20. Plaintiff incorporates by reference in this count, the allegations of Paragraphs "1", "2" and "4" of Count I.

21. On May 16, 1963, Dominick entered into a "Customer's Agreement" with plaintiff, Candace Van Alen.

22. The "Customer's Agreement" was in force at all times material hereto.

23. Provision 2 of the "Customer's Agreement" provided in part as follows:

"All transactions shall be subject to the rules, regulations, customs and usage of the exchange or market (and its clearing house, if any) where executed, and to the provisions of the Securities Exchange Act and the rules and regulations of the Federal Securities and Exchange Commission and of the Federal Reserve Board insofar as they may be applicable."

24. At all times material hereto, the defendants had and exercised discretionary control over plaintiff's securities account at Dominick.

25. All of the transactions for plaintiff's securities account at Dominick were executed on the New York Stock Exchange.

26. Dominick, by its employees, knowingly and willingly failed to abide by the requirements of New York Stock Exchange Rules 405 and 408 as to all 137 purchases and sales made for plaintiff's securities account at Dominick.

27. As a result of Dominick's failure to follow New York Stock Exchange Rules 405 and 408, as to the said 137 purchases and sales, plaintiff incurred net losses and expenses totalling \$170,112.00.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally as follows: on the first count in the sum of \$599,046.00 with interest; on the second count in the sum of \$599,046.00 with interest plus punitive damages in the sum of \$1,000,000.00; on the third count in the sum of \$170,112.00 with interest; on the fourth count in the sum of \$146,270.00 with interest; on the fifth count in the sum of \$170,112.00, all together with the costs and disbursements of this action.

KAMERMAN & KAMERMAN

By Jerome Kamerman

Jerome Kamerman, Member of Firm
Attorneys for Plaintiff
Office & P. O. Address
500 Fifth Avenue
New York, New York 10036
Telephone: 244-5245

DEFENDANT'S ANSWER TO THIRD AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

CANDACE VAN ALLEN, :

Plaintiff, : 71 Civ. 5438 (LP)

-against- :

ANSWER TO THIRD
AMENDED COMPLAINT

DOMINICK & DOMINICK, INC. and :
PAUL deGIVE, :

Defendants. :

----- -x

Defendants Dominick & Dominick, Incorporated and Paul deGive, by their attorneys White & Case, answer the third amended complaint herein as follows:

1. Deny every allegation of paragraphs 1, 3, 4, 5, 6, 9, 10, 11, 13, 14, 15, 17, 18, 19, 24, 26 and 27.

2. Admit the second and third sentence of paragraph 7 and except as herein expressly admitted, deny the allegations of paragraph 7.

3. Deny the allegations of paragraph 23 and make reference to the "Customer's Agreement" for the content thereof.

FIRST AFFIRMATIVE DEFENSE AS TO ALL COUNTS

4. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE AS TO ALL COUNTS

5. Plaintiff directed that various transactions, including transactions here complained of, be made.

6. The material facts of each transaction executed on behalf of plaintiff were confirmed in writing to plaintiff and her agents immediately after execution and in periodic status reports.

7. Plaintiff made no complaint with respect to such transactions at or about the time they were made or within a reasonable time thereafter.

8. Plaintiff has approved and ratified all transactions initiated on her behalf by either of the defendants.

THIRD AFFIRMATIVE DEFENSE AS TO ALL COUNTS

9. Defendants repeat paragraphs 5 through 8 of this answer.

10. Plaintiff is estopped from seeking any relief from defendants.

FOURTH AFFIRMATIVE DEFENSE AS TO ALL COUNTS

11. Defendants repeat paragraphs 5 through 8 of this answer.

12. Plaintiff has waived any rights she may otherwise have had to seek any relief against these defendants.

WHEREFORE, defendants demand judgment dismissing the third amended complaint against them and granting to them the costs and disbursements, including attorneys' fees, of this action.

Dated: New York, New York
January 7, 1975

WHITE & CASE

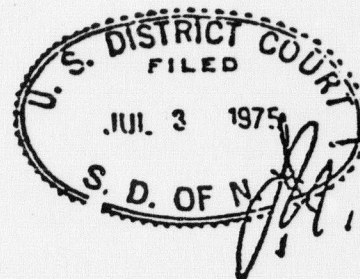
By *S. [Signature]*
A Member of the Firm
Attorneys for Defendants
Dominick & Dominick,
Inc. and Paul deGivie
14 Wall Street
New York, New York 10005
732-1840

TO:

KAMERMAN & KAMERMAN
Attorneys for Plaintiff
Candace Van Alen
500 Fifth Avenue
New York, New York 10036
244-5245

ENDORSEMENT ORDER DISMISSING THE FIFTH
COUNT, DATED JUNE 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
CANDACE VAN ALLEN,

Plaintiff,

- v -

DOMINICK & DOMINICK, INC.,
and PAUL deGIVE,

Defendants. :
-----x

71 Civ. 5438

ENDORSEMENT ORDER

Pursuant to Rule 56 of the Fed.R.Civ.P. the plaintiff herein has moved for summary judgment on the Fifth Count of the complaint which alleges that the defendants knowingly and willingly violated Rules 405(1) and 408 of the New York Stock Exchange in contravention of the Customer's Agreement entered into when the plaintiff became a customer of Dominick & Dominick, Inc. The defendants have cross-moved to dismiss this count.^{1/}

1/ With respect to the first theory underlying Count V defendants' motion will be treated as one to dismiss for failure to state a claim. However, with respect to the "disobeying agent" and breach of contract theories since an affidavit with extensive exhibits had been submitted in support of the motion it will be deemed one for summary judgment and as such granted.

MICROFILM

JUL 03 1975

It is settled that a violation of some of the exchange rules might give rise to a private right of action for damages. Colonial Realty Corp. v. Bache & Co., 358 F.2d 178 (2d Cir. 1966). However, a violation of such a rule will not be per se actionable. Schonholtz v. American Stock Exchange, 376 F.Supp.1089, 1091-92 (S.D.N.Y. 1974). See Landry v. FDIC, 486 F.2d 139 (3rd Cir. 1973). In this district the rule appears to be that for a claim to lie for a violation of exchange rules it must be accompanied by charges of fraud. Rich v. New York Stock Exchange, 379 F.Supp. 1122, 1126 (S.D.N.Y. 1974) citing Starkman v. Seroussi, 377 F.Supp. 518 (S.D.N.Y. 1974) and Schonholtz, supra. See also Bush v. Bruns Nordeman & Co., CCH Sec. L. Rep. [1972-73 Transfer Binder] 193,674 (S.D.N.Y. 1972).

The Fifth Count of the complaint merely alleges that the defendants failed to abide by the requirements of rules 405 and 508 and "[a]s a result" plaintiff is said to have been damaged. No effort has been made to precisely link these purported violations to a fraudulent scheme

since plaintiff has expressed the view that this is unnecessary. Thus, plaintiff contends "that allegations of fraud are not required to state a cause of action under NYSE Rules 405 or 408." Plaintiff's Reply Memo at 14. It would seem that it is plaintiff's position that a technical violation of these rules--without more--would give rise to an action for damages. But this Court does not understand such to be the law. See cases cited supra.

In addition plaintiff has argued that the defendants are liable for violation of these rules on two different though closely related theories: "disobeying agent" and breach of contract. The argument is that the defendants under the Customer's Agreement were agents of the plaintiff and that in failing to follow the exchange rules they acted as "disobeying agents" and therefore breached the contract. It would appear that under either of these theories, assuming that they are otherwise viable, plaintiff would have to establish a causal connection between the alleged violations and the damage claimed.

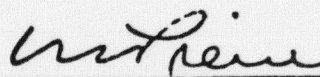
Indeed, the plaintiff concedes as much. Reply Memo at 17. In this respect the plaintiff has rested her case on the conclusory allegation that the failure to abide by these rules led to her losses. Very little is given to expand on this assertion. In fact plaintiff candidly admits that "it is impossible to determine to what extent losses would have been avoided had Dominick obeyed the NYSE rules." Plaintiff's Memorandum at 9. Having reviewed the documents submitted on this motion the Court finds that there is no material issue on this question of causation between the purported violations of the rules and the losses allegedly incurred and that these losses in the stock market were not brought about by the alleged failure to comply with the rules in question.

Defendants' motion is granted and plaintiff's motion is denied.

Submit order on two days notice.

SO ORDERED.

Dated: New York, New York
June 30, 1975



LAWRENCE W. PIERCE
U. S. D. J.

NOTICE OF SETTLEMENT AND ORDER, DATED
7/11/75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CANDACE VAN ALLEN,

Plaintiff,

v.

DOMINICK & DOMINICK, INC. and
PAUL DeGIVE,

Defendants.

----- x

U.S.D.C.

-FILED-

JUL 14 1975

Pl. v. Van AL.
Plaintiff

NOTICE OF SETTLEMENT
71 Civ. 5438 LWP

+ Order

S I R S:

Please take notice, that an Order, of which the within is a true copy, will be presented for settlement to the Honorable Lawrence W. Pierce, United States District Judge, at the Office of the Clerk, United States Courthouse, Foley Square, New York, New York on July 16, 1975.

Dated: New York, New York
July 11, 1975

Yours, etc.

WHITE & CASE

By *J. A. Brist*

A Member of the Firm
Attorneys for Defendants,
14 Wall Street
New York, New York 10005
(212) 732-1040

TO:

Messrs. Kamerman & Kamerman
500 Fifth Avenue
New York, New York 10036

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC

FILED

JUL 24, 1975

S.D.O.F.N.Y.

----- x

CANDACE VAN ALLEN, :

Plaintiff, :

v. :

ORDER

DOMINICK & DOMINICK, INC. and :

PAUL DeGIVE, :

Defendants. :

71 Civ. 5438 LWP

----- x

Plaintiff having moved this Court for an Order pursuant to Rule 56 F.R. Civ. for summary judgment on the fifth count of the complaint herein; and

Defendants having cross-moved to dismiss the fifth count of the complaint; and

Said motion and cross motion having duly come on to be heard and due deliberation having been had and the Court having rendered its opinion, dated June 30, 1975; it is hereby

ORDERED, that plaintiff's motion for summary judgment is denied; and it is further

ORDERED, that defendants' cross-motion to dismiss the fifth count of the complaint is granted and that said fifth count of the complaint is hereby dismissed with prejudice.

L. W. Pierce
Lawrence W. Pierce,
United States District Judge

Dated: New York, New York

JULY 16, 1975

PRE-TRIAL ORDER, DATED MARCH 17, 1976

(Pages A-62 to A-113 following)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CANDACE VAN ALEN,	:	
	:	
Plaintiff,	:	71 Civ. 5438 (LWP)
	:	
-against-	:	<u>PRE-TRIAL ORDER</u>
	:	
DOMINICK & DOMINICK, INC.,	:	
and PAUL deGIVE,	:	
	:	
Defendants.	:	
	:	
-----	:	x

On March 18, 1976, the attorneys for the parties in this action appeared before this Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken:

1. It was agreed that there are no amendments to the pleadings. The issues are framed in paragraphs 9(a) and 9(b) of this Pre-Trial Order.

2. The parties agreed that the trial of this action should be based upon this Order and upon the pleadings, except that the following issues raised by the pleadings are expressly abandoned:

None.

It should be noted, however, that Count V of the third amended complaint has been dismissed with prejudice by order of this Court.

3. (a) The parties stipulate that the facts set forth on Schedule A hereto are not in dispute in

this action. (Each party reserves the right to object to the materiality of any stipulated fact and its relevance to the issues). It is further stipulated that summaries of transactions in plaintiff's securities accounts will be agreed upon by counsel pursuant to paragraph 8(b) hereof. Said summaries will be described in a Schedule B to be attached hereto when such agreement is reached.

3. (b) The plaintiff's contentions as to liability and damages are as follows:

(1) Notwithstanding Regulation Section 240.10 (b)-5 of the Securities Exchange Act of 1934, defendants through the use of telephones in interstate commerce and the United States mails, employed schemes and engaged in acts which operated as a fraud and deceit upon plaintiff by churning plaintiff's securities and custodian accounts at Dominick, B.N.Y. and FNCB. Said churning of plaintiff's accounts resulted in net losses and expenses to plaintiff totaling \$599,046.00.

(2) Notwithstanding defendants' obligations to comply with the rules and regulations of NYSE, NASD, the Securities and Exchange Commission and the Securities Exchange Act of 1934 in the handling of

plaintiff's securities and custodian accounts, defendants during the period covered by the complaint, through fraud, misrepresentation and the omission of material facts, induced plaintiff to allow defendants to continue to exercise discretionary power over plaintiff's securities and custodian accounts, and to purchase and sell securities in those accounts with the intent to deceive and defraud plaintiff, resulting in net losses and expenses to plaintiff, totaling \$599,046.00; plaintiff also seeks punitive damages in the amount of \$1,000,000.00.

(3) Defendants during the period covered by the complaint, through the excessive purchase and sale of securities in plaintiff's account at Dominick, which purchases and sales were excessive in amount in light of the size and purpose of plaintiff's account, resulted in net losses and expenses to plaintiff totaling \$170,112.00.

(4) Defendants, during the period covered by the complaint, through "in and out trading" of securities in plaintiff's account at Dominick and in her custodian account at the B.N.Y., which purchases and sales were excessive in amount in light of the size and purpose of plaintiff's account, resulted in net losses and expenses to plaintiff totaling \$146,270.00.

3. (c) The defendants' contentions as to liability and damages are set forth below:

A. With respect to Count I of the Third Amended Complaint, defendants' contentions are:

(1) Defendants deny that during the period February 11, 1969 through April 3, 1970 they violated the Securities Exchange Act of 1934 and the rules and regulations thereunder. Specifically, defendants deny that they violated Rule 10b-5 of the Securities and Exchange Commission, by employing schemes to defraud or engaging in acts and a course of conduct which operated as a fraud and deceit upon plaintiff, by "churning" plaintiff's securities and custodian accounts at Dominick, B.N.Y. and FNCB.

(2) Both defendants at all times acted in good faith and without any fraudulent purpose with respect to plaintiff's securities accounts and transactions therein.

(3) The trading carried on by deGive on plaintiff's behalf during the period as to which plaintiff complains was not excessive in light of the nature of plaintiff's accounts, and her situation, needs and objectives.

(4) Dominick has no responsibility for, and no liability with respect to, transactions in plaintiff's custodian accounts at the B.N.Y. and FNCB.

(5) Plaintiff, is and was a sophisticated investor, who, by her words and conduct, approved the methodology employed by deGive in

trading for her accounts, and in certain instances approved and/or ordered the specific transactions of which she now purports to complain. Plaintiff gave prior approval to at least the purchases of securities on her behalf in October 1969 and ordered the sales which occurred in January 1970.

(6) Plaintiff by her words and conduct ratified the transactions of which she now purports to complain.

(7) Plaintiff is estopped from seeking damages from defendants with respect to the transactions set forth in the complaint.

(8) Plaintiff has waived any rights she may otherwise have had to seek damages from these defendants.

(9) Plaintiff's losses, if any, were caused by a general decline in the stock market and not by any wrongful conduct of defendants.

(10) If defendants are liable to plaintiff with respect to any of the transactions set forth in the complaint, plaintiff's damages, if any, are limited by law to the commissions which defendants received on those transactions.

B. The defendants' contentions as to liability and damages with respect to Counts III and IV of the Third Amended Complaint are as follows:

(1) Dominick has no responsibility for, or liability with respect to, plaintiff's custodian accounts at the B.N.Y. and FNCB, or the securities transactions therein.

(2) Defendants deny that either Count states a claim upon which relief may be granted.

(3) Insofar as Counts III and IV may state a claim upon which relief may be granted, each is entirely duplicative of what is alleged in Count I and contains no additional matter. Defendants repeat their contentions with respect to Count I.

C. The defendants' contentions as to liability and damages with respect to Count II of the Third Amended Complaint are as follows:

(1) Count II is a claim based upon alleged common law fraud. It alleges, in paragraph 9, five misrepresentations purportedly made by defendants. The purported misrepresentations in subparagraphs (a), (c), (d) and (e) of paragraph 9 involve alleged violations of New York Stock Exchange Rules. This Court has held, by way of summary judgment, that the alleged violation of such rules did not cause plaintiff's stock market losses. Therefore under the law of the case no claim for relief is stated with respect to the allegations contained in subparagraphs (a), (c), (d) and (e) of paragraph 9.

(2) The sole issue remained to be tried with respect to Count II relates to the allegations contained in paragraph 9(b) of the third

amended complaint. With respect to said allegation defendants deny that either defendant represented to plaintiff that defendants, or either of them, had developed or perfected a system insuring profits in the purchases and sales of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her.

(3) Defendants deny that plaintiff believed that defendants had developed and perfected a system insuring profits in the purchases and sales of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her.

(4) Defendants deny that plaintiff relied upon any representation that defendants had developed and perfected a system insuring profits in the purchases and sales of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her.

(5) Defendants deny that they are guilty of common law fraud.

4. (a) The exhibits which plaintiff now intends to offer at trial are set forth on the list attached hereto as Schedule C. The exhibits which defendants now expect to offer at the trial are set forth on the list attached hereto as Schedule D. The parties reserve the

right to introduce additional exhibits should they decide to do so. Should any party hereafter decide to offer additional exhibits, prompt notice thereof shall be given to each of the parties in writing setting forth the reason why said exhibit was not theretofore identified. No exhibit may be offered at trial unless identified as above stated.

4. (b) Not applicable.

4. (c) With respect to the documents listed in Schedules C and D pursuant to paragraph 4(a) hereof, on or before April 15, 1976, counsel will indicate (1) which of the documents designated by the opposing party are conceded to be genuine without conceding admissibility and (2) which are conceded to be admissible, by marking the Schedules C and D hereto as follows: Those documents marked with one asterisk (*) are conceded to be genuine without conceding admissibility. Those marked with two asterisks (**) may be received in evidence. All others are deemed marked for identification only.

5. The parties agree that the witnesses whom each party now intends to call, along with the specialty of experts to be called, are those listed below. Should any party hereafter decide to call any additional witnesses, prompt notice of their identity shall be given to each party in writing, setting forth the reason why such witness was not theretofore identified. No witness may be called at trial unless identified as above stated.

(a) Plaintiff's Witnesses:

(i) CANDACE VAN ALLEN - Plaintiff

- (ii) MILTON SHAPIRO - Certified Public Accountant
- (iii) PAUL deGIVE - Defendant
- (iv) AVERY ROCKEFELLER - President of Dominick
- (v) THOMAS H. MITCHELL - Former Director of Compliance for Dominick
- (vi) JOHN H. McDONALD - Retired Securities Broker (Expert Witness)
- (vii) FRANK McMAHON - Assistant Cashier, First National City Bank
- (viii) Any witness designated by either defendant.

(b) Defendants' Witnesses:

- (i) JAMES VAN ALLEN
- (ii) All witnesses designated by plaintiff
- (iii) ROBERT LAWLER
- (iv) FRIDA SAVAGE - Expert Witness
- (v) PAUL DESMOND - Expert Witness
- (vi) GORDON MURPHY
- (vii) MARY GRACE WATSON
- (viii) GROVER C. JENSEN - Bank of New York.

6. Stipulation relating to number of expert witnesses:

None.

However, the parties agree that on or before April 12, 1976 they will provide to each other, in writing, the information set forth in Federal Rule of Civil Procedure 26(b) 4(A)(i), with respect to each expert witness

to be called by said parties. Specifically, each party will furnish, with respect to said party's expert witnesses, the following information: (1) the subject matters on which such experts are expected to testify; (2) the substance of the facts and opinions as to which such experts are expected to testify, and (3) summaries of the grounds for each opinion of such experts.

7. The following are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference.

(a) In Count I of the Third Amended Complaint, plaintiff claims damages in the sum of \$599,046.00 plus interest and costs, resulting from defendants' acts and conduct which operated as a fraud and deceit upon plaintiff by churning plaintiff's securities and custody accounts and by purchasing securities unsuitable for plaintiff.

(b) In Count II of the Third Amended Complaint, plaintiff claims damages in the sum of \$599,046.00 and interest and costs, plus punitive damages in the sum of \$1,000,000 resulting from defendants' inducing plaintiff to allow defendants to make 285 purchases or sales of securities in her accounts in reliance upon defendants' misrepresentations and omissions of material facts to plaintiff.

(c) In Count III of the Third Amended Complaint, plaintiff claims damages in the sum of \$170,112.00

plus interest and costs resulting from defendants' fraudulent acts in making 137 purchases or sales of securities at the instance of defendants for plaintiff's account at Dominick, which transactions were excessive in number in light of the size and purpose of plaintiff's account.

(d) In Count IV of the Third Amended Complaint, plaintiff claims damages in the sum of \$146,270.00 resulting from defendants fraudulent acts that took the form of "in and out trading", whereby defendants caused to be made 136 purchases and sales of securities in plaintiff's securities account at Dominick, and custodian account at the B.N.Y., since these transactions were unsuitable for plaintiff in light of her investment purpose which was known to defendants.

(8) The parties also agreed on the following matters:

(a) Plaintiff at this time expects to require four (4) trial days.

Defendants estimate, that if there is prior agreement on schedules summarizing the transactions believed by the parties to be relevant to the trial of this action, defendants' case should take approximately three (3) days.

8 (b) Other Procedural Agreements.

Counsel for plaintiff and defendants will attempt to agree upon schedules summarizing transactions which either party regards as relevant. Such agreement will not constitute a stipulation as to admissibility unless expressly so stated.

If agreement cannot be reached with respect to any particular matter in any proposed schedule, the specific point or points of disagreement will be stated in writing by the parties and the remainder of the schedule will be agreed to, if possible.

9 (a) The issues to be tried, as formulated by the plaintiff, are as follows:

(i) Did defendants, during the period beginning February 10, 1969 and continuing until April 3, 1970, churn plaintiff's securities account and custodian accounts in violation of the Securities Exchange Act of 1934 and rules and regulations thereof?

(ii) If defendants are liable as alleged in paragraph 3(b)(i) herein, what monetary damages did plaintiff suffer as a result thereof?

(iii) Did defendants during the period beginning February 10, 1969 and continuing until April 3, 1970, fraudulently misrepresent and deceive plaintiff into believing that they were handling her accounts in accordance with the rules and regulations of the Securities Exchange Act of 1934, NYSE and NASD, thereby inducing plaintiff to allow defendants to continue their exercise of discretionary power over her accounts?

(iv) Did defendants represent to plaintiff that they had developed and perfected a system insuring profit in the purchase and

sale of securities which would be applied to the purchase and sale of securities for her account and would result in profits to her, thereby inducing plaintiff to allow defendants to continue their exercise of discretionary power over her accounts?

(v) If defendants are liable as alleged in paragraph 3(b)(iii) or paragraph 3(b)(iv) herein, what monetary damages did plaintiff suffer as a result thereof?

(vi) If defendants are liable as alleged in paragraph 3(b)(iii) or paragraph 3(b)(iv), were defendants' wrongful actions done willfully, wantonly, or maliciously, or were these actions characterized by some other aggravating circumstance? If so, should plaintiff be awarded punitive damages? How much should the punitive damages be?

(vii) Did defendants make excessive purchases and sales of securities for plaintiff's securities account at Dominick, which purchases and sales were excessive in light of the size and amount of her account and were unsuitable for plaintiff in light of her investment purposes known to defendants.

(viii) If defendants are liable as alleged in paragraph 3(b)(vii) herein, what monetary damages did plaintiff suffer as a result thereof?

(ix) Were defendants' acts which took the form of making purchases and sales at defendants'

direction for plaintiff's account at Dominick and custodian account at the B.N.Y. "in and out trading", in light of plaintiff's investment purposes known to defendants?

(x) If defendants are liable as alleged in paragraph 3(b)(ix) herein, what monetary damages did plaintiff suffer as a result thereof?

9 (b) The issues to be tried, as formulated by the defendants, are as follows:

A. With respect to Counts I, III and IV,

(i) Did deGive during the period beginning February 11, 1969 and continuing until April 3, 1970, churn plaintiff's securities account and custodian accounts in violation of the Securities Exchange Act of 1934 and rules and regulations thereunder, that is, did deGive exercise bad faith, act with a fraudulent purpose, and cause plaintiff to enter into an excessive number of securities transactions, all in disregard of her interests for the purpose of deriving profits for himself?

(ii) Is Dominick under any circumstances liable for any transactions in respect of plaintiff's custodian accounts at B.N.Y. and FNCB?

(iii) If the answer to issue (i) above is in the affirmative, to what damages is plaintiff entitled, and, specifically, is defendants' liability limited as a matter of law to the amount

of commissions received by them with respect to any transaction as to which such affirmative answer applies?

B. With respect to Count II,

(i) Are the following allegations of Count II at issue:

"(a) Defendants represented that they had and would continue to abide by the rules of the New York Stock Exchange and of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission and the Securities Exchange Act of 1934 in their handling of plaintiff's securities and custody accounts;

"(b) Defendants failed to tell plaintiff that orders to purchase and sell securities for plaintiff's account would not be reviewed and approved by any authorized person before they were placed by defendant deGive;

"(c) Defendants failed to tell plaintiff that they would not use due diligence to learn essential facts relative to each order executed on behalf of plaintiff.

"(d) Defendants failed to tell plaintiff that they would not supervise diligently plaintiff's accounts at Dominick, at the B.N.Y. and at FNCB over which accounts defendants had and intended to exercise discretionary control;"

when this Court has held, in its opinion and order of June 30, 1975, that "...[T]here is no material issue on this question of causation between the purported violations of

the rules and the losses allegedly incurred and ... these losses in the stock market were not brought about by the alleged failure to comply with the rules in question..."

(ii) Did defendants fraudulently state that they had developed and perfected a system insuring profits in the purchase and sale of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her?

(iii) Did plaintiff believe that defendants had developed and perfected a system insuring profits in the purchase and sale of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her?

(iv) Did plaintiff rely upon any representation by defendants that they had developed and perfected a system insuring profits in the purchase and sale of securities which would be applied to the purchase and sale of securities for plaintiff's accounts and would result in profits to her?

D. With respect to all Counts:

(i) Were defendants' acts the cause in fact of any loss to plaintiff?

(ii) Were plaintiff's losses a result of a decline in the stock market?

(iii) Did plaintiff approve and/or ratify any or all of the transactions initiated on her behalf by either of the defendants?

(iv) Is plaintiff estopped from seeking damages from the defendants with respect to the transactions set forth in her complaint? Has plaintiff waived any rights she may otherwise have had to seek damages from these defendants with respect to transactions set forth in her complaint?

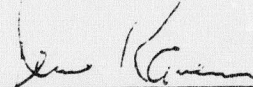
Dated: New York, New York
 , 1976

SO ORDERED:

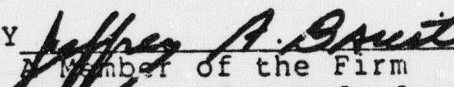
U.S.D.J.

CONSENTED TO:

KAMERMAN & KAMERMAN

By 
A Member of the Firm
Attorneys for Plaintiff
500 Fifth Avenue
New York, New York 10036

WHITE & CASE

BY 
A Member of the Firm
Attorneys for Defendants
14 Wall Street
New York, New York 10005

SCHEDULE A
(Stipulated Facts)

(1) During the period as to which plaintiff complains, Dominick & Dominick, Inc. ("Dominick") was a Delaware corporation engaged in the stock brokerage business with its principal place of business at 14 Wall Street, New York, New York.

(2) During the period as to which plaintiff complains, Paul deGive ("deGive") was an employee, Vice President and a shareholder of Dominick.

(3) From 1953 until April 1, 1970 plaintiff Candace Van Alen ("Van Alen") maintained a securities account at Dominick. Plaintiff opened a securities account at Dominick in 1953. This account was maintained by her until the account was closed at plaintiff's request on April 3, 1970. At the start of this period, plaintiff gave Dominick and deGive a written discretionary power over her account at Dominick.

(4) Dominick, on May 16, 1963, entered into a "Customers Agreement" with plaintiff, which agreement was in force until April 3, 1970. A copy of said Agreement has been marked as plaintiff's trial exhibit ___, for identification.

(5) In 1953, plaintiff gave deGive a discretionary power over a securities custodian account which Van Alen maintained at the Empire Trust Company and the Bank of New York, (B.N.Y.). (Empire Trust Company became the Bank of New York in 1967.) This power was in effect until October, 1969, at which time plaintiff's securities

custodian account was transferred to the First National City Bank.

(6) In October, 1969, plaintiff gave deGive a discretionary power over a securities custodian account which Van Alen maintained at First National City Bank ("FNCB"). This discretionary power was in effect until April 3, 1970.

(7) At all times Dominick was a member firm of the New York Stock Exchange.

(8) Plaintiff complains of a total of 285 individual purchases and individual sales of securities which were made in plaintiff's securities account and custodian accounts at Dominick, B.N.Y. and FNCB, through Dominick and at deGive's direction, during the period February 11, 1969 through March 3, 1970.

(9) During the period as to which plaintiff complains (February 11, 1969 through March, 1970), Avery Rockefeller, Jr., was President of Dominick.

(10) All stocks involved in the transactions complained of were listed on the New York Stock Exchange.

(11) As part of his duties at Dominick, at least from 1963 through the period as to which plaintiff complains, deGive wrote weekly "market letters". Authentic copies of these letters have been marked as defendants' trial exhibits _____ through _____, for identification.

(12) From 1953 until she closed her account at Dominick in April, 1970, confirmation slips of all trades made in her account at Dominick were mailed to plaintiff; and

monthly statements of plaintiff's account at Dominick, which indicated all trading therein, were mailed to her after the month involved.

(13) From 1953 until October, 1969, when Van Alen closed her custodian account at the B.N.Y., confirmation slips of all trades made in the B.N.Y. (Empire Trust) account and monthly statements relating to such account, which indicated all trading therein, were mailed to Van Alen.

(14) From October, 1969 through April, 1970, confirmation slips of all trades made in the F.N.C.B. account and monthly statements relating to such account, which indicated all trading therein, were mailed to Van Alen.

(15) From 1953 through March, 1970, the copies of the confirmation slips and monthly statements relating to Van Alen's accounts at the Empire Trust Company-Bank of New York, F.N.C.B. and Dominick, which have been referred to in items 12 through 14 above, were received by Van Alen's employee, Mary Grace Watson.

SCHEDULE CPLAINTIFF'S EXHIBITS

4. (a) The exhibits which each party now expects to offer at the trial are as follows:

(1) Plaintiff's Exhibits:

(i) Copies of NYSE Rules 342, 405 and 408, as were in effect during the period covered by the complaint, and NYSE Educational Circular No. 252 dated December 20, 1968. (McCarthy Exhibits 9 and 10).

(ii) Schedules reflecting the frequency and number and money value of securities transactions executed by defendants in plaintiff's accounts at Dominick, B.N.Y. and FNCB during the period from February 10, 1969 through March 3, 1970.

(iii) Bank statements reflecting sales and purchases of securities in plaintiff's custodian account at FNCB for the period October, 1969 through April 7, 1970. (Defendants' Exhibits 56 -- 90).

(iv) Statements reflecting sales and purchases of securities in plaintiff's securities account at Dominick during the period February 10, 1969 and continuing until April 3, 1970. (Defendants' Exhibits 91 -- 115; Exhibits 298 -- 308).

(v) Bank statements reflecting the sales and purchases of securities in plaintiff's custodian account at B.N.Y. for the period from February 10, 1969 and continuing

through April 3, 1970. (Defendants' Exhibits 10 -- 51).

(vi) Schedules reflecting the net equity at market value, as of the date shown, of plaintiff's securities account at B.N.Y., FNCB and Dominick during the period covered by the complaint.

(vii) Order slips and other documents reflecting the transactions made for plaintiff's custodian accounts at B.N.Y. and FNCB, between February 10, 1969 and continuing through April 3, 1970. (Plaintiff's Request to Produce).

(viii) Schedules reflecting the frequency and number of securities transactions executed by defendants in plaintiff's accounts during the five year period immediately preceding the period covered by the complaint.

(ix) deGive's charts. (Plaintiff's Exhibits 17 -- 36).

(x) deGive's technical comments dated:
February 11, 1969; February 17, 1969; May 26, 1969;
November 10, 1969; and January 12, 1969. (Technical comments dated November 10, 1969 are plaintiff's Exhibit 68; other technical comments not listed as Exhibits).

(xi) Excerpts from Dominick & Dominick's manual, pages 12, 20, 108. (Plaintiff's Exhibits 64 and 65).

(xii) deGive's diary. (Plaintiff's Exhibits 2 -- 15).

(xiii) Defendants' account card for plaintiff dated July 17, 1953. (Plaintiff's Exhibit 16).

(xiv) Eleanor deGive's confirmation file, pages 18 - 19. (Plaintiff's Exhibit 63).

(xv) Form Trading Authorization Limited to Purchase and Sales of Securities and Commodities as of March 30, 1953. (Plaintiff's Exhibit 60).

(xvi) Customers agreement for plaintiff's account dated May 16, 1963. (Defendants' Exhibit 333).

(xvii) Depositions of Paul deGive taken on March 9, 1972; September 14, 1972; October 30, 1972; November 1, 1972; November 2, 1972; May 23, 1973; and September 4, 1973.

(xviii) Deposition of Avery Rockefeller, on September 11, 1972.

(xix) Deposition of Thomas Mitchell on September 12, 1972.

SCHEDULE D
DEFENDANTS' EXHIBITS

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	Form letter dated April 20, 1953 to Empire Trust Company from CVA, authorizing acceptance of securities instruction from deGive with deGive's signature.	CVA1
	CVA letter to deGive dated April 3, 1970, revoking deGive's power of attorney.	CVA2
	Dominick "Customer's Agreement", dated May 16, 1963 and signed by CVA.	CVA333
	One-page form letter to Dominick, signed by CVA and dated May 16, 1963, re margin account authorization.	CVA334
	Opening account card for CVA at D&D, dated July 23, 1953 (cash account) and May 16, 1963 (margin account).	deG 16
	Form letter, dated December 24, 1948 and signed by CVA, opening her custodian account at Empire Trust.	Jensen 3
	Empire Trust internal form with instructions for administration, statements, etc. re CVA's custody accounts, dated January 12, 1949 (with subsequent additions).	Jensen 4
	Letter dated April 29, 1953 to the Empire Trust Company from CVA, authorizing acceptance of securities instructions from deGive (from BNY files).	Jensen 1
	Document entitled "New Custodian Account" dated June 1957, opening CVA's lien account at Empire Trust.	Jensen 2
	Bank of New York new custodian account form, with operating details, dated March 15, 1967.	Jensen 5

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
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Letter addressed to Bank of New York by Candace Van Alen, dated October 24, 1969, closing her regular custodian account.

Jensen 7

Letter of Instructions relative to CVA custodian account at FNCB, dated October 24, 1969.

McMahon 1

Desk card for Candace Van Alen, Account #340153 at FNCB.

McMahon 32

Letter dated April 3, 1970, to First National City Bank from CVA, terminating deGive's power of attorney over her custody account there.

McMahon 25

"Investment Counsel Agreement" dated 5/11/70 between CVA and her new brokers, Loomis, Sayles & Company pursuant to which Loomis, Sayles was given discretion over plaintiff's account at the Bank of New York.

Monthly statements relating to Van Alen's account at Dominick for the years 1953 through March 1970, covering the periods ending:

7/31/53
9/25/53
11/27/53
12/31/53
3/30/54
6/30/54
7/30/54
9/30/54
12/31/54
1/31/55
4/29/55
5/30/55
6/30/55
7/29/55
8/26/55
12/31/55
1/27/56
3/28/56
5/25/56
6/29/56
7/27/56
10/26/56
11/30/56
12/31/56

<u>EXHIBIT NUMBER</u> <u>OR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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	2/27/57	
	5/31/57	
	6/30/57	
	12/31/57	
	1/28/58	
	6/27/58	
	12/31/58	
	2/27/59	
	5/31/59	
	6/16/59	
	8/28/59	
	12/31/59	
	1/31/60	
	2/26/60	
	5/30/60	
	6/30/60	
	9/27/60	
	12/31/60	
	1/27/61	
	3/30/61	
	4/27/61	
	6/28/61	
	1/25/62	
	2/21/62	
	3/29/62	
	4/26/62	
	5/31/62	
	6/28/62	
	7/26/62	
	8/30/62	
	9/27/62	
	10/25/62	
	11/29/62	
	12/31/62	
	1/31/63	
	2/28/63	
	3/29/63	
	4/25/63	
	5/31/63	
	6/28/63	
	7/31/63	
	8/30/63	
	9/30/63	
	10/31/63	
	11/29/63	
	12/31/63	
	1/31/64	
	2/28/64	
	3/31/64	
	4/30/64	
	5/28/64	
	6/30/64	
	7/31/64	
	8/31/64	
	9/30/64	
	10/30/64	
	11/30/64	
	12/31/64	
	1/29/65	
	2/26/65	
	3/31/65	
	4/30/65	

EXHIBIT NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

5/28/65
6/30/65
7/30/65
8/31/65
9/30/65
10/29/65
11/30/65
12/31/65
1/31/66
2/28/66
3/31/66
4/30/66
5/31/66
6/30/66
7/29/66
8/31/66
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4/30/69
5/29/69
6/30/69
7/31/69
8/29/69
9/30/69
11/ 2/69
11/28/69
12/31/69
1/30/70
2/27/70
3/31/70
3/ 3/70
5/29/70
6/26/70

91 - 93
94 - 96
97
98
99 - 101
101 - 104
105
106
107 - 108
109 - 111
112 - 113
114 - 115
298 - 299
300 - 302
303 - 304
305 - 306
307
308

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	"Confirmation" slips for each transaction in Van Alen's account at Dominick for the period February 11, 1969 through March 1970	Certain of these confirmation slips have been marked as the following deposition exhibits: CVA119 - CVA245 CVA256 - CVA297 and CVA309 - CVA332.

Monthly statements relating to Van Alen's account at the Empire Trust Company - Bank of New York for the years 1964 through 1969, covering the periods ending:

2/29/64
 3/31/64
 4/30/64
 5/31/64
 6/30/64
 7/31/64
 8/31/64
 9/30/64
 10/31/64
 11/30/64
 12/31/64
 1/31/65
 2/28/65
 3/31/65
 4/30/65
 5/31/65
 6/30/65
 7/31/65
 8/31/65
 9/30/65
 10/31/65
 11/30/65
 12/31/65
 1/31/66
 2/28/66
 3/31/66
 4/30/66
 5/31/66
 6/30/66
 7/31/66
 8/31/66
 9/30/66
 10/31/66
 11/30/66
 12/31/66
 1/31/67
 2/28/67
 3/31/67
 4/30/67
 5/26/67
 6/30/67
 7/31/67

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	8/31/67	
	9/30/67	
	10/31/67	
	11/30/67	
	12/31/67	
	1/31/68	
	2/29/68	
	3/31/68	
	4/30/68	
	5/31/68	
	6/30/68	
	7/31/68	
	8/31/68	
	9/30/68	
	10/31/68	
	11/30/68	
	12/31/68	
	1/31/69	33
	2/28/69	10 - 11
	3/31/69	12 - 13
	4/30/69	14
	5/ 6/69	15
	5/31/69	16 - 18
	6/30/69	19 - 21
	6/30/69	22
	7/31/69	23
	8/31/69	24
	9/30/69	25 - 26
	10/31/69	27 - 29
	11/30/69	30 - 31
	12/31/69	32
	12/31/69	51
	"Advice" slips for each transaction in Van Alen's account at the Bank of New York for the period February 11, 1969 through November 1969.	
	Monthly statements relating to Van Alen's account at FNCR for the period November, 1969 through November, 1970, covering the periods ending:	
	10/31/69	
	11/28/69	
	12/31/69	
	1/30/70	56 - 57
	2/27/70	61 - 71
	3/31/70	58 - 60
	4/30/70	61
	5/29/70	62
	6/30/70	63
	6/30/70	72
	7/31/70	74
	8/31/70	75 - 76
(statement of assets)	8/20/70	87 - 89
	10/30/70	77 - 83
(statement of assets)	10/ 6/70	84 - 86

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
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Various confirmation slips for transactions in Van Alen's account at First National City Bank during the period November 1969 through March 1970.

Monthly statements relating to Eleanor deGive's account at Dominick for the period February 11, 1969 through March 31, 1970, covering the periods ending:

2/28/69
3/28/69
4/30/69
5/29/69
6/30/69
7/31/69
8/29/69
9/30/69
11/ 2/69
11/28/69
12/31/69
1/30/70
2/27/70
3/31/70

Confirmation slips for each transaction in Eleanor deGive's account at Dominick during the period February 11, 1969 through March 31, 1970.

Watson letter to deGive, June 1955, re reduction of James Van Alen's (JVA) Empire Trust loan.

Watson 10

Watson letter to Pugh (Empire Trust), 9/21/62, re \$25,000 loan.

Watson 12

Pugh letter to Watson, 9/24/62, re \$25,000 loan at Empire Trust.

Watson 13

DeGive letter to CVA, dated July 19, 1963, re \$179,000 loan at Empire Trust.

CVA5

BNY "Loan Offering Sheet" dated 9/22/65 relating to loan to CVA of \$200,000 and containing valuation of BNY.

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	Letter dated 5/3/67 from BNY to CVA relating to CVA's \$100,000 loan at BNY.	
	BNY internal memorandum dated 5/15/67 relating to 1967 loan to CVA of \$200,000.	
	The following internal documents of the Bank of New York relating to CVA loans at BNY in 1967 and 1968:	
	A. Internal memorandum relating to loans on 1/13/67, 5/15/67 and 4/15/68.	
	B. Loan Liability Ledger.	
	C. Internal Form dated 4/15/68, entitled "Demand Loan".	
	D. Internal Form dated 10/22/68, entitled "Demand Loan" (two copies).	
	E. "Statement of Purpose for \$300,000 loan, signed by Van Alen and dated 4/15/68.	
	F. Internal Form bearing the title "Liability of Candace Van Alen".	
	Loan Ledger for Candace Van Alen, October 27-December 1, 1969, showing \$200,000 loan at FNCB.	McMahon 24
	McLean letter to CVA, dated February 9, 1970, stating that her FNCB loan had been paid off, with attached statement of purpose and bank note forms.	deG 1
	DeGive letter to CVA, dated February 9, 1954, proposing investment in certain stocks.	CVA335
	DeGive letter to CVA, dated June 10, 1954, requesting approval of \$60,000 investment.	CVA336
	DeGive letter to CVA, dated September 10, 1954, re market and proposing conversation with CVA.	CVA337

EXHIBIT NUMBER FOR IDENTIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)
	DeGive letter to CVA, dated January 18, 1955, re profit-taking in her account and state of market.	CVA338
	DeGive letter to CVA, dated June 15, 1955, re transactions for her and prognosis for market.	CVA339
	CVA letter to deGive, dated June 5, 1955 re Bank's sale of stock and unauthorized loan pay down.	CVA3
	CVA letter to deGive, dated June 7, 1962, requesting deposit of \$21,000 to her account at FNCB.	CVA340
	Watson enclosure letter to deGive, dated September 30, 1954.	CVA341
	DeGive letter to Watson, dated November 19, 1968, explaining lag between securities sale and loan repayment.	CVA342
	CVA letter to Dominick dated April 31, 1970, revoking deGive's power of attorney and requesting cash and securities transfer to BNY.	CVA343
	DeGive letter to CVA, dated August 13, 1969, re current state of her account with handwritten note by CVA.	CVA345
	DeGive letter to CVA, dated November 20, 1969 re profits taken and state of market.	CVA346
	10/14/68 CVA letter to Muecke (BNY), complaining about delay in transmitting tender information to CVA.	
	Letter from the BNY to CVA dated 1/16/68 relating to fees in CVA's custodian account at BNY.	
	Letter dated October 14, 1968, to Mr. Muecke of BNY, from Candace Van Alen.	Jensen 21
	Letter dated June 7, 1967 to James H. Van Alen, from David S. Gamble of BNY suggesting meeting.	Jensen 22

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	Letter dated March 7, 1967, to Mr. and Mrs. James H. Van Alen from Alan Schumacher of BNY suggesting meeting.	Jensen 23
	Handwritten letter from CVA to McLean, dated February 2, 1970, re loan liquidation and activity fee at FNCB.	McMahon 27
	Letter, dated February 10, 1970, to CVA from Green (FNCB) explaining activity fee charges.	McMahon 29
	Letter dated January 27, 1970, to CVA from McMahon, re acti- vity fee charges at FNCB.	McMahon 30
	Single sheet of paper headed "Candace Van Alen," prepared by Watson 10/29/69 - hand- written list of CVA stock transactions.	Watson 1
	Six-page handwritten schedule prepared by Watson showing CVA stock transactions, October 1969 to February 1970.	Watson 2-7
	Watson letter to deGive, dated October 1, 1953, re income check.	CVA4
	Watson letter to deGive, 1/31/65 re Life Assurance of Pennsylvania stock.	Watson 8
	Watson letter to deGive, dated July 27, 1968, en- closing checks for \$20,000.	CVA6
	Watson letter to deGive, dated November 18, 1969, re interest charged on loan.	CVA7
	Watson letter to BNY, 10/10/68, re interest rate.	Watson 14
	Watson letter to FNCB, 1/19/70, re activity fee.	Watson 16
	Series of eleven letters from CVA to BNY authorizing trans- fer of funds from one account to another.	
	List of transactions in CVA's account at Empire Trust during the year 1962. (Produced by plaintiff).	

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	1965 tax return, with attachments, of Candace and James Van Alen.	
	1966 tax return, with attachments, of Candace and James Van Alen.	
	1967 tax return, with attachments, of Candace and James Van Alen.	
	1968 tax return, with attachments, of Candace and James Van Alen.	
	1969 tax return, with attachments, of Candace and James Van Alen.	
	1970 tax return with attachments, of Candace and James Van Alen.	
	List of assets in Candace Van Alen's lien account at BNY (#44561), showing principal cash balance as of April 16, 1970.	Jensen 16
	List of assets held in Candace Van Alen's account at BNY (#44560) as of May 6, 1967.	Jensen 17
	Three page document, listing stocks held in CVA's portfolio at FNCB as of December 10, 1969.	McMahon 21
	February, 1970 statement, relating to CVA account at FNCB.	
	FNCB computer printout containing CVA tax information for 1969 [document erroneously dated "1968"].	
	12/31/68-5/29/70 Monthly statements for Margaret L. Bruguiere trust for benefit of James H. Van Alen at U.S. Trust Company.	
	"Cash Ledger" and Monthly statements for account at U.S. Trust Company entitled: u/w James J. Van Alen For James H. Van Alen', covering the period from 12/31/64 through 5/29/70.	

EXHIBIT NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

"Cash Ledger" and Monthly statements for account entitled "u/w Frederick W. Vanderbilt for James H. Van Alen Paragraph 8TH-G" at U.S. Trust Company covering the period from 12/12/69 through 6/12/70.

"Cash Ledger" and Monthly statements for the account at U.S. Trust Company entitled "u/w Frederick W. Vanderbilt for James H. Van Alen, covering the period from 3/11/65 through 1/29/71.

Statements of Assets, for the year 1966, relating to James H. Van Alen's custodian account at Empire Trust and BNY.

Schedule of Property dated 1/28/69 in James Van Alen's account (#873822) at U.S. Trust Company.

List of assets dated March 20, June 20, September 20 and December 20, 1967, relating to the custodian account of James Van Alen at BNY.

Monthly statements relating to James Van Alen's account at Dominick for the period February 11, 1969 through March 31, 1970, covering the periods ending:

2/28/69
3/28/69
4/30/69
5/31/69
6/30/69
7/31/69
8/29/69
9/30/69
11/02/69
11/28/69
12/31/69
1/30/70
2/27/70
3/31/70

Statement of Assets dated 6/30/66 relating to custodian account of CVA at Empire Trust Company.

4/9/53 letter from Gordon Murphy to Paul deGivie informing him of Van Alen's high tax bracket.

EXHIBIT NUMBER FOR IDENTIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)
	Schedule D, with attachments, to the 1969 tax return of Paul and Eleanor deGive.	
	Schedule D to CVA's 1971 tax return.	
	Document listing Lowry's Reports' "buy" and "sell" signals during the period February 10, 1969 through March 5, 1970.	
	Chart depicting the move- ment of the Dow Jones Indus- triels average during 1969.	
	Chart depicting the move- ment of the Dow Jones Indus- triels average during 1970.	
	Listing of the Daily Closing Dow Jones Averages for all trading days in 1969.	
	Listing of the Daily Closing Dow Jones Averages for all trading days in 1970.	
	Workpapers consisting of twenty-three pages, prepared by Dominick and listing Eleanor deGive's transactions at Dominick during complaint period.	deG 63
	DeGive letter to CVA, dated July 7, 1958, referring to discussion of money factors.	deG 67
	Sample confirmation slip with respect to the Bank of New York's account at Dominick relating to a sale on May 27, 1969 of 800 shares of Eckerd Drugs.	
	Statement of Assets in CVA's account at Empire Trust, for period ending 12/31/65.	
	Typed list of securities transactions in Van Alen's account at Empire Trust Com- pany during March, April and May, 1966 (produced by plaintiff).	
	List of Assets in Van Alen's account at BNY, held on October 16, 1968.	

EXHIBIT NUMBER FOR IDENTIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)
	The summaries of transactions referred to in paragraphs 3 and 8 of the pre-trial order.	
	CVA letter to deGive dated 8/19/54.	
	Watson letter to deGive dated 11/18/69 complaining of delay in repayment of loan.	CVA8
	Two-page typed list entitled "Cost Values of Securities In Van Alen Accounts with Empire Trust Company" (produced by plaintiff).	
	Single page dated 3/12/64 entitled "Candace Van Alen Common Stock Holdings - Empire Trust Company (produced by plaintiff).	
	Single page entitled "Candace Van Alen - Bank of New York dated May 3, 1968, listing securities (produced by plaintiff).	
	Two typed pages dated October 20, 1969 bearing the heading "Candace Van Alen - Dominick & Dominick" listing various transactions (produced by plaintiff).	
	Two typed pages dated October 20, 1969 bearing the heading "Candace Van Alen - Bank of New York" listing various transactions (produced by plaintiff).	
	Internal memorandum prepared by Douglas Brown of BNY explaining CVA's transfer to FNCB.	Jensen 6
	Letter of Instructions relative to CVA custodian account at FNCB dated October 24, 1969.	McMahon 2
	Memorandum dated October 24, 1969 from Stafford McClean of FNCB re CVA and JVA.	McMahon 26
	Watson letter to deGive dated 7/11/65 re fractional shares of stock.	Watson 9

<u>EXHIBIT NUMBER</u> <u>FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
	DeGive letter to Watson 6/3/55 re Missouri Pacific Railroad.	Watson 11
	Letter from Hunt of BNY to Watson dated 10/14/68, re interest rate.	Watson 15
	CVA 1969 diary.	CVA344
	CVA's 1969 appointment calendar.	CVA348
	CVA's 1970 "Deductible" diary.	CVA349
	CVA's 1970 appointment calendar.	CVA350

EXHIBIT NUMBER	DEPOSITION EXHIBIT NUMBER
<u>IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u> (WHERE APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

October 22, 1962
January 7, 1963
January 14, 1963
January 28, 1963
February 4, 1963
February 11, 1963
February 18, 1963
February 25, 1963
March 4, 1963
March 11, 1963
March 18, 1963
March 25, 1963
April 8, 1963
April 15, 1963
April 22, 1963
April 29, 1963
May 6, 1963
May 13, 1963
May 20, 1963
May 27, 1963
June 3, 1963
June 10, 1963
June 17, 1963
July 1, 1963
July 8, 1963
July 15, 1963
July 22, 1963
August 5, 1963
August 19, 1963
August 26, 1963
September 3, 1963
September 9, 1963
September 16, 1963
September 23, 1963
September 30, 1963
October 7, 1963
October 14, 1963
October 21, 1963
October 28, 1963
November 4, 1963
November 11, 1963
November 18, 1963
November 26, 1963
December 9, 1963
December 16, 1963
December 23, 1963
January 6, 1964
January 13, 1964
January 20, 1964
January 27, 1964
February 3, 1964
February 10, 1964
February 17, 1964

<u>EXHIBIT NUMBER</u> <u>FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates
(Cont'd):

February 24, 1964
March 2, 1964
March 9, 1964
March 16, 1964
March 23, 1964
March 30, 1964
April 6, 1964
April 13, 1964
April 20, 1964
April 27, 1964
May 4, 1964
May 11, 1964
May 18, 1964
May 25, 1964
June 1, 1964
June 9, 1964
June 15, 1964
June 22, 1964
June 26, 1964
July 13, 1964
July 20, 1964
July 27, 1964
August 3, 1964
August 11, 1964
August 17, 1964
August 24, 1964
August 31, 1964
September 8, 1964
September 14, 1964
September 21, 1964
September 28, 1964
October 5, 1964
October 12, 1964
October 19, 1964
October 26, 1964
November 2, 1964
November 9, 1964
November 16, 1964
November 23, 1964
November 30, 1964
December 7, 1964
December 14, 1964
December 21, 1964
December 28, 1964
January 4, 1965
January 11, 1965
January 18, 1965
January 25, 1965
February 1, 1965
February 15, 1965
February 23, 1965

<u>EXHIBIT NUMBER</u> <u>FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates
(Cont'd):

March 1, 1965
March 9, 1965
March 15, 1965
March 22, 1965
March 30, 1965
April 5, 1965
April 13, 1965
April 19, 1965
April 26, 1965
May 3, 1965
May 10, 1965
May 17, 1965
May 24, 1965
June 1, 1965
June 7, 1965
June 14, 1965
June 21, 1965
June 28, 1965
July 6, 1965
July 13, 1965
July 20, 1965
July 27, 1965
August 3, 1965
August 10, 1965
August 16, 1965
August 25, 1965
August 30, 1965
September 7, 1965
September 13, 1965
September 20, 1965
September 27, 1965
October 4, 1965
October 11, 1965
October 18, 1965
October 25, 1965
November 1, 1965
November 8, 1965
November 15, 1965
November 22, 1965
November 29, 1965
December 7, 1965
December 13, 1965
December 20, 1965
December 27, 1965
January 3, 1966
January 10, 1966
January 17, 1966
January 24, 1966
January 31, 1966
February 7, 1966
February 14, 1966

EXHIBIT NUMBER FOR IDENTIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)
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"Technical Comments",
i.e., deGivé market letters,
bearing the following dates
(Cont'd):

February 21, 1966
March 1, 1966
March 7, 1966
March 14, 1966
March 21, 1966
March 28, 1966
April 4, 1966
April 11, 1966
April 16, 1966
April 25, 1966
May 2, 1966
May 9, 1966
May 16, 1966
May 23, 1966
May 31, 1966
June 6, 1966
June 13, 1966
June 20, 1966
June 28, 1966
July 12, 1966
July 20, 1966
July 27, 1966
August 2, 1966
August 10, 1966
August 17, 1966
August 30, 1966
September 7, 1966
September 19, 1966
September 26, 1966
October 3, 1966
October 10, 1966
October 24, 1966
October 31, 1966
November 7, 1966
November 14, 1966
November 21, 1966
November 28, 1966
December 5, 1966
December 12, 1966
December 19, 1966
December 27, 1966
January 3, 1967
January 9, 1967
January 16, 1967
January 23, 1967
January 30, 1967
February 6, 1967
February 27, 1967
March 6, 1967
March 13, 1967
March 20, 1967

<u>EXHIBIT NUMBER</u> <u>FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates
(Cont'd):

March 28, 1967
April 3, 1967
April 11, 1967
April 17, 1967
April 24, 1967
May 1, 1967
May 8, 1967
May 15, 1967
May 22, 1967
May 29, 1967
June 6, 1967
June 13, 1967
June 19, 1967
June 27, 1967
July 11, 1967
July 17, 1967
July 25, 1967
August 1, 1967
August 22, 1967
September 5, 1967
September 12, 1967
September 19, 1967
September 25, 1967
October 2, 1967
October 9, 1967
October 23, 1967
October 30, 1967
November 6, 1967
November 13, 1967
November 20, 1967
November 27, 1967
December 4, 1967
December 11, 1967
December 18, 1967
December 28, 1967
January 2, 1968
January 9, 1968
January 16, 1968
January 22, 1968
January 29, 1968
February 5, 1968
February 13, 1968
February 20, 1968
February 26, 1968
March 4, 1968
March 12, 1968
April 1, 1968
April 8, 1968
April 16, 1968
April 22, 1968
April 29, 1968

<u>EXHIBIT NUMBER</u> <u>IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates
(Cont'd):

May 6, 1968
May 13, 1968
May 21, 1968
May 27, 1968
June 3, 1968
June 13, 1968
June 17, 1968
June 24, 1968
July 1, 1968
July 8, 1968
July 16, 1968
July 22, 1968
July 29, 1968
August 5, 1968
August 12, 1968
September 3, 1968
September 9, 1968
September 16, 1968
September 23, 1968
September 30, 1968
October 8, 1968
October 21, 1968
October 28, 1968
November 4, 1968
November 12, 1968
November 18, 1968
November 26, 1968
December 2, 1968
December 10, 1968
December 16, 1968
December 23, 1968
December 30, 1968
January 7, 1969
January 13, 1969
January 21, 1968
January 27, 1969
February 3, 1969
February 11, 1969
February 17, 1969
February 24, 1969
March 4, 1969
March 17, 1969
March 24, 1969
April 2, 1969
April 8, 1969
April 15, 1969
April 21, 1969
April 30, 1969
May 5, 1969
May 12, 1969
May 19, 1969

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates
(Cont'd):

May 26, 1969
June 3, 1969
June 9, 1969
June 16, 1969
June 30, 1969
July 8, 1969
July 15, 1969
July 22, 1969
July 29, 1969
August 12, 1969
August 19, 1969
August 26, 1969
September 2, 1969
September 8, 1969
September 15, 1969
September 22, 1969
September 29, 1969
October 6, 1969
October 13, 1969
October 20, 1969
October 27, 1969
November 5, 1969
November 10, 1969
November 17, 1969
November 24, 1969
December 1, 1969
December 9, 1969
December 15, 1969
December 22, 1969
December 29, 1969
January 5, 1970
January 12, 1970
January 19, 1970
January 26, 1970
February 2, 1970
February 11, 1970
February 16, 1970
February 24, 1970
March 2, 1970
March 10, 1970
March 17, 1970
March 25, 1970

<u>EXHIBIT NUMBER OR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	degive's large scroll-type technical chart, covering the period January, 1965 - March, 1970.	deGive 17
	1966 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it.	
	1967 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it.	
	1968 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it.	
	1969 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it.	
	1970 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it.	
	1933 daily graph of Buying Power v. Selling Pressure prepared by Lowry's Reports, Inc.	
	Lowry's chart for 1934.	
	Lowry's chart for 1935.	
	Lowry's chart for 1936.	
	Lowry's chart for 1937.	
	Lowry's chart for 1938.	
	Lowry's chart for 1939.	
	Lowry's chart for 1940.	
	Lowry's chart for 1941.	
	Lowry's chart for 1942.	
	Lowry's chart for 1943.	
	Lowry's chart for 1944.	

EXHIBIT NUMBER
IDENTIFICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

Lowry's chart for 1945

Lowry's chart for 1946

Lowry's chart for 1947

Lowry's chart for 1948

Lowry's chart for 1949

Lowry's chart for 1950

Lowry's chart for 1951

Lowry's chart for 1952

Lowry's chart for 1953

Lowry's chart for 1954

Lowry's chart for 1955

Lowry's chart for 1956

Lowry's chart for 1957

Lowry's chart for 1958

Lowry's chart for 1959

Lowry's chart for 1960

Lowry's chart for 1961

Lowry's chart for 1962

Lowry's chart for 1963

Lowry's chart for 1964

Lowry's chart for 1965

Lowry's chart for 1966

Lowry's chart for 1967

Lowry's chart for 1968

deG 19

Lowry's chart for 1969

deG 21

Lowry's chart for 1970

deG 23

Technical chart relating
to Dow Jones Industrials
for 1962Technical chart relating
to Dow Jones Industrials
for 1963Technical chart relating
to Dow Jones Industrials
for 1964

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS (WHERE APPLICABLE)</u>	<u>DEPOSITION EXHIBIT NUMBER</u>
	Technical chart relating to Dow Jones Industrials for 1965	
	Technical chart relating to Dow Jones Industrials for 1966	
	Technical chart relating to Dow Jones Industrials for 1967	
	Technical chart relating to Dow Jones Industrials for 1968	deG 27
	Technical chart relating to Dow Jones Industrials for 1969	deG 31
	Technical chart relating to Dow Jones Industrials for 1970	deG 35
	Technical chart relating to Dow Jones Industrial [Average] for 1958 (6 weeks moving average)	
	Technical chart relating to Dow Jones Industrial Average for 1959 (6 weeks average)	
	Technical chart relating to Dow Jones Industrial Average for 1958	
	Technical chart relating to Dow Jones Industrial Average for 1959	
	Technical chart relating to Dow Jones Industrial Average for 1960	
	Technical chart relating to Dow Jones Industrial Average for 1961	
	Technical chart relating to Dow Jones Industrial Average for 1962	
	Technical chart relating to Dow Jones Industrial Average for 1963	
	Technical chart relating to Dow Jones Industrial Average for 1964	

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	Technical chart relating to Dow Jones Industrial Average for 1965	
	Technical chart relating to Dow Jones Industrial Average for 1966	
	Technical chart relating to Dow Jones Industrial Average for 1967	
	Technical chart relating to Dow Jones Industrial Average for 1968	deG 24
	Technical chart relating to Dow Jones Industrial Average for 1969	deG 28
	Technical chart relating to Dow Jones Industrial Average for 1970	deG 32
	Technical chart relating to Dow Jones Railroad Average for 1958	
	Technical chart relating to Dow Jones Railroad Average for 1959	
	Technical chart relating to Dow Jones Railroad Average for 1960	
	Technical chart relating to Dow Jones Railroad Average for 1961	
	Technical chart relating to Dow Jones Railroad Average for 1962	
	Technical chart relating to Dow Jones Railroad Average for 1963	
	Technical chart relating to Dow Jones Railroad Average for 1964	
	Technical chart relating to Dow Jones Railroad Average for 1965	
	Technical chart relating to Dow Jones Railroad Average for 1966	

EXHIBIT NUMBER FOR IDENTIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)
	Technical chart relating to Dow Jones Railroad Average for 1967	
	Technical chart relating to Dow Jones Railroad Average for 1968	deG 26
	Technical chart relating to Dow Jones Railroad Average for 1969	deG 30
	Technical chart relating to Dow Jones Railroad Average for 1970	deG 34
	Technical chart relating to Dow Jones Utilities Average for 1958	
	Technical chart relating to Dow Jones Utilities Average for 1959	
	Technical chart relating to Dow Jones Utilities Average for 1960	
	Technical chart relating to Dow Jones Utilities Average for 1961	
	Technical chart relating to Dow Jones Utilities Average for 1962	
	Technical chart relating to Dow Jones Utilities Average for 1963	
	Technical chart relating to Dow Jones Utilities Average for 1964	
	Technical chart relating to Dow Jones Utilities Average for 1965	
	Technical chart relating to Dow Jones Utilities Average for 1966	
	Technical chart relating to Dow Jones Utilities Average for 1967	
	Technical chart relating to Dow Jones Utilities Average for 1968	deG 25

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
	Technical chart relating to Dow Jones Utilities Average for 1969.	deG 29
	Technical chart relating to Dow Jones Utilities Average for 1970.	deG 33
	DeGive's loose-leaf note- book sheets bearing columns relating to various stock data and indices.	deG 36
	Technical chart relating to Chromalloy in 1968.	deG 39
	Technical chart relating to Chrysler in 1968.	deG 40
	Technical chart relating to Eastern Airlines in 1968.	deG 41
	Technical chart relating to Fansteel in 1968.	deG 42
	Technical chart relating to Itek in 1968.	deG 43
	Technical chart relating to Ogden Corporation for 1968.	deG 44
	Technical chart relating to Pan American World Airways in 1968.	deG 45
	Technical chart relating to Raytheon for 1968.	deG 46
	Technical chart relating to TGS for 1968.	deG 47
	Technical chart relating to TWA for 1968.	deG 48
	Technical chart relating to Zenith Radio for 1968.	deG 49
	Technical chart relating to Litton Industries for 1968.	deG 50

<u>EXHIBIT NUMBER</u> <u>FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION</u> <u>EXHIBIT NUMBER</u> <u>(WHERE APPLICABLE)</u>
	Technical chart relating to Teledyne Inc. for 1968	deG 51
	Technical chart relating to EG&G, Inc. for 1968	deG 52
	Technical chart relating to Sanders Associates for 1968	deG 53
	Binders containing approximately 1,500 deGive technical charts, similar to those above, pertaining to various individual stocks:	
	A. For the year 1967,	
	B. For the years 1968-1969,	
	C. For the years 1970-1971.	
	3-Trend Security Charts, 1968.	deG 56
	3-Trend Security Charts, 1969.	

DEFENDANTS' AMENDMENT TO PRE-TRIAL
ORDER, DATED AUGUST 5, 1976

(Pages A-114 to A-150 following)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CANDACE VAN ALLEN,

Plaintiff,

71 Civ. 5438 (LWP)

--against--

AMENDMENT TO
PRE-TRIAL ORDER

DOMINICK & DOMINICK, INC.,
and PAUL deGIVE,

Defendants.

----- x

Defendants Dominick & Dominick, Incorporated
and Paul deGive, by their attorneys, White & Case,
respectfully request that the Pre-Trial Order in this
action be amended as follows:

1. Defendants add the following witnesses to
their list of trial witnesses (§5(b) of the Pre-Trial
Order): "(ix) Robert Neumayer of Dominick & Dominick."
" x) Richard Thomas of the First National City
Bank."
"(xi) Stafford McLean of the First National City
Bank."
2. Defendants modify their trial exhibit list
(Schedule D to the Pre-Trial Order) as follows:
 - a. The description of certain Dominick confirma-
tion slips appearing on page 5 of Schedule D gives

the dates of those slips as February 11, 1969 through March 1970. The dates should be corrected to read "January 1966 through March 1970."

b. The description of certain Bank of New York "Advice" slips listed on page 7 of Schedule D gives the dates for those slips as February 11, 1969 through November 1969. Those dates should be corrected to read "February 1964 through November 1969."

c. The date of a CVA letter to Dominick listed on page 9 of Schedule D is stated to be April 31, 1970. The date should be corrected to read "April 3, 1970."

d. The word "hand-written" should be deleted from the description of a single sheet of paper headed "Candace Van Alen," prepared by Watson 10/29/69, listed on page 10 of Schedule D.

e. The date of a Watson letter to deGIVE listed on page 10 of Schedule D is stated to be November 18, 1969. The date should be corrected to read "November 18, 1968."

f. The description of a list of assets held in Candace Van Alen's account at BNY appearing on page 11 of Schedule D gives the date of such list as of May 6, 1967. The date should be corrected to read "as of May 6, 1969."

g. The description of certain monthly statements appearing on page 11 of Schedule D gives

the dates of those statements as 12/31/68 - 5/29/70. The dates should be corrected to read "12/31/68 - 4/30/70."

h. The description of certain "Cash Ledger" and monthly statements for the James Van Alen account at U.S. Trust Co. appearing on page 11 of Schedule D gives the dates of those statements as 12/31/64 through 4/30/70. The dates should be corrected to read "12/31/64 through 5/29/70."

i. The date of a Watson letter to deGivè listed on page 14 of Schedule D is stated to be 11/18/69. The date should be corrected to read "11/18/68."

The following exhibits are added to the defendants' list:

(i) Confirmation slips for each transaction in the account at Dominick of James Van Alen for the period February 11, 1969 through March 1970.

(ii) "Schedule of Property" dated August 13, 1970 relating to account number 873822 of James H. Van Alen at United States Trust Company.

(iii) "Cash Ledger" and Monthly Statements for account number 873822 of James H. Van Alen at United States Trust Company covering the period January 1965 through March 1970.

(iv) Letter dated March 8, 1974 from Philip Greenberg of Kamerman & Kamerman to Vincent R. FitzPatrick, Jr. of White & Case.

(v) 1963 technical chart prepared by Paul deGivè with red, blue, green and pencilled lines.

(vi) 1964 technical chart prepared by Paul

deGive with red, blue, green and pencilled lines.

(vii) 1965 technical chart prepared by Paul deGive with red, blue, green and pencilled lines.

(viii) "Contact Report" from F.E. Reed to Bank of New York Credit Department dated January 13, 1967.

(ix) "Contact Report" from Wyndham R. Hunt to Bank of New York Credit Department dated April 10, 1968.

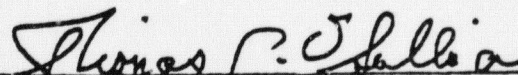
3. These witnesses and exhibits have been added to defendants' list either because they were originally omitted by oversight or because trial preparation work performed since submission of the original list had indicated a potential need for the additional witness and exhibits.

4. Attached hereto is a revised Schedule D to the Pre-Trial Order. The revised Schedule contains the corrections and additions listed above, and for the sake of convenience, ascribes an identification number to all exhibits on the list.

Respectfully submitted,

WHITE & CASE

By



A Member of the Firm
Attorneys for Defendants
14 Wall Street
New York, New York 10005
732-1040

CERTIFICATE OF SERVICE

This is to certify that the undersigned this date mailed a copy of the foregoing Amendment to Pre-Trial Order to the following person:

Jerome Kamerman, Esq.
500 Fifth Avenue
New York, New York 10036

Benjamin S. Bilus
Benjamin S. Bilus

Dated: August 3, 1976

SCHEDULE D
DEFENDANTS' EXHIBITS

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

- | | | |
|----|--|----------|
| 1. | Two copies of form letter dated April 20, 1953 to Empire Trust Company from CVA, authorizing acceptance of securities instruction from deGive, one copy with deGive's signature only and one with CVA's as well. | CVA1 |
| 2. | CVA letter to deGive dated April 3, 1970, revoking deGive's power of attorney. | CVA2 |
| 3. | Dominick "Customer's Agreement", dated May 16, 1963 and signed by CVA. | CVA333 |
| 4. | One-page form letter to Dominick, signed by CVA and dated May 16, 1963, re margin account authorization. | CVA334 |
| 5. | Opening account card for CVA at D&D, dated July 23, 1953 (cash account) and May 16, 1963 (margin account). | deG 16 |
| 6. | Form letter, dated December 24, 1948 and signed by CVA, opening her custodian account at Empire Trust. | Jensen 3 |
| 7. | Empire Trust internal form with instructions for administration, statements, etc. re CVA's custody accounts, dated January 12, 1949 (with subsequent additions). | Jensen 4 |
| 8. | Form letter dated April 29, 1953 to the Empire Trust Company from CVA, authorizing acceptance of securities instructions from deGive (from BNY files). | Jensen 1 |
| 9. | Document entitled "New Custodian Account" dated June 7, 1957, opening CVA's lien account at Empire Trust. | Jensen 2 |

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE
APPLICABLE)

- | | | |
|-----|--|------------|
| 10. | Empire Trust Company new custodian account form, with operating details, dated February 12, 1949. | Jensen 5 |
| 11. | Letter addressed to Bank of New York by Candace Van Alen, dated October 24, 1969, closing her regular custodian account. | Jensen 7 |
| 12. | Watson letter to McLean (FNCB), dated July 7, 1970, requesting explanation of certain activity in CVA's account. | McMahon 1 |
| 13. | Desk card for Candace Van Alen, Account #340153 at FNCB. | McMahon 32 |
| 14. | Letter dated April 3, 1970, to First National City Bank from CVA, terminating deGive's power of attorney over her custody account there. | McMahon 25 |
| 15. | "Investment Counsel Agreement" dated 5/11/70 between CVA and her new brokers, Loomis, Sayles & Company pursuant to which Loomis, Sayles was given discretion over plaintiff's account at the Bank of New York. | |
| 16. | Monthly statements relating to Van Alen's account at Dominick for the years 1953 through March 1970, covering the periods ending: | |

7/31/53
 9/25/53
 11/27/53
 12/31/53
 3/30/54
 6/30/54
 7/30/54
 9/30/54
 12/31/54
 1/31/55
 4/29/55
 5/30/55
 6/30/55
 7/29/55
 8/26/55
 12/31/55
 1/27/56

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE

3/28/56
5/25/56
6/29/56
7/27/56
10/26/56
11/30/56
12/31/56
2/27/57
5/31/57
6/30/57
12/31/57
1/28/58
6/27/58
12/31/58
2/27/59
5/31/59
6/16/59
8/28/59
12/31/59
1/31/60
2/26/60
5/30/60
6/30/60
9/27/60
12/31/60
1/27/61
3/30/61
4/27/61
6/28/61
1/25/62
2/21/62
3/29/62
4/26/62
5/31/62
6/28/62
7/26/62
8/30/62
9/27/62
10/25/62
11/29/62
12/31/62
1/31/63
2/28/63
3/29/63
4/25/63
5/31/63
6/28/63
7/31/63
8/30/63
9/30/63
10/31/63
11/29/63
12/31/63
1/31/64

EXHIBIT
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FICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

2/28/64
3/31/64
4/30/64
5/28/64
6/30/64
7/31/64
8/31/64
9/30/64
10/30/64
11/30/64
12/31/64
1/29/65
2/26/65
3/31/65
4/30/65
5/28/65
6/30/65
7/30/65
8/31/65
9/30/65
10/29/65
11/30/65
12/31/65
1/31/66
2/28/66
3/31/66
4/30/66
5/31/66
6/30/66
7/29/66
8/31/66
9/30/66
10/31/66
11/30/66
12/30/66
1/31/67
2/28/67
3/31/67
4/28/67
5/31/67
6/30/67
7/31/67
8/31/67
9/29/67
10/31/67
11/30/67
12/29/67
1/31/68
2/29/68
3/31/68
4/30/68
5/31/68
6/28/68

EXHIBIT
NUMBER
FOR IDEN-
TIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

7/31/68	
8/30/68	
9/30/68	
10/31/68	
11/29/68	
12/31/68	
1/31/69	91 - 93
2/28/69	94 - 96
3/28/69	97
4/30/69	98
5/29/69	99 - 101
6/30/69	101 - 104
7/31/69	105
8/29/69	106
9/30/69	107 - 108
11/ 2/69	109 - 111
11/28/69	112 - 113
12/31/69	114 - 115
1/30/70	298 - 299
2/27/70	300 - 302
3/31/70	303 - 304
5/ 3/70	305 - 306
5/29/70	307
6/26/70	308

17. "Confirmation" slips for each transaction in Van Alen's account at Dominick for the period January 1966 through March 1970.

Certain of these confirmation slips have been marked as the following deposition exhibits: CVA119 - CVA245; CVA256 - CVA297; and CVA309 - CVA332.

18. Monthly statements relating to Van Alen's account at the Empire Trust Company - Bank of New York for the years 1964 through 1969, covering the periods ending:

2/29/64
3/31/64
4/30/64
5/31/64
6/30/64
7/31/64
8/31/64
9/30/64
10/31/64
11/30/64

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE

12/31/64
1/31/65
2/28/65
3/31/65
4/30/65
5/31/65
6/30/65
7/31/65
8/31/65
9/30/65
10/31/65
11/30/65
12/31/65
1/31/66
2/28/66
3/31/66
4/30/66
5/31/66
6/30/66
7/31/66
8/31/66
9/30/66
10/31/66
11/30/66
12/31/66
1/31/67
2/28/67
3/31/67
4/30/67
5/26/67
6/30/67
7/31/67
8/31/67
9/30/67
10/31/67
11/30/67
12/31/67
1/31/68
2/29/68
3/31/68
4/30/68
5/31/68
6/30/68
7/31/68
8/31/68
9/30/68
10/31/68
11/30/68
12/31/68
1/31/69
2/28/69
3/31/69

33
10 - 11
12 - 13

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE)

	4/30/69	14
	5/ 6/69	15
	5/31/69	16 - 18
	6/30/69	19 - 21
	6/30/69	22
	7/31/69	23
	8/31/69	24
	9/30/69	25 - 26
	10/31/69	27 - 29
	11/30/69	30 - 31
	12/31/69	32
	12/31/69	51
19.	"Advice" slips for each transaction in Van Alen's account at the Bank of New York for the period 1964 through November 1969.	
20.	Monthly statements relating to Van Alen's account at FNCB for the period October 1969 through November, 1970, covering the periods ending:	
	10/31/69	
	11/28/69	
	12/31/69	
	1/30/70	56 - 57
	2/27/70	64 - 71
	3/31/70	58 - 60
	4/30/70	61
	5/29/70	62
	6/30/70	63
	6/30/70	72
	7/31/70	74
	8/31/70	75 - 76
(statement of assets)	8/20/70	87 - 89
	10/30/70	77 - 83
(statement of assets)	10/ 6/70	84 - 86
21.	Various confirmation slips for transactions in Van Alen's account at First National City Bank during the period November 1969 through March 1970.	
22.	Monthly statements relating to Eleanor deGive's account at	

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE APPLICABLE)

Dominick for the period February 11, 1969 through March 31, 1970, covering the periods ending:

2/28/69
3/28/69
4/30/69
5/29/69
6/30/69
7/31/69
8/29/69
9/30/69
11/ 2/69
11/28/69
12/31/69
1/30/70
2/27/70
3/31/70

- | | | |
|-----|---|-----------|
| 23. | Confirmation slips for each transaction in Eleanor deGive's account at Dominick during the period February 11, 1969 through March 31, 1970. | |
| 24. | Watson letter to deGive, June 1955, re reduction of James Van Alen's (JVA) Empire Trust loan. | Watson 10 |
| 25. | Watson letter to Pugh (Empire Trust), 9/21/62, re \$25,000 loan. | Watson 12 |
| 26. | Pugh letter to Watson, 9/24/62, re \$25,000 loan at Empire Trust. | Watson 13 |
| 27. | DeGive letter to CVA, dated July 19, 1963, re \$179,000 loan at Empire Trust. | CVA5 |
| 28. | BNY "Loan Offering Sheet" dated 9/22/65 relating to loan to CVA of \$200,000 and containing valuation of BNY account. | |
| 29. | Letter dated 5/3/67 from BNY to CVA relating to CVA's \$100,000 loan at BNY. | |

EXHIBIT NUMBER FOR IDENT- TIFICATION	DESCRIPTION OF EXHIBITS	DEPOSITION EXHIBIT NUM- BER (WHERE APPLICABLE)
30.	BNY internal memorandum dated 5/15/67 relating to 1967 loan to CVA of \$200,000.	
31.	The following internal documents of the Bank of New York relating to CVA loans at BNY in 1967 and 1968:	
	A. Internal memorandum relating to loans on 1/13/67, 5/15/67 and 4/15/68.	
	B. Loan Liability Ledger.	
	C. Internal Form dated 4/15/68, entitled "Demand Loan" (two copies).	
	D. Internal Form dated 10/22/68, entitled "Demand Loan".	
	E. "Statement of Purpose" for \$300,000 loan, signed by Van Alen and dated 4/15/68.	
	F. Internal Form bearing the title "Liability of Candace Van Alen".	
32.	Loan Ledger for Candace Van Alen, October 27-December 1, 1969, showing \$200,000 loan at FNCB.	McMahon 24
33.	McLean letter to CVA, dated February 9, 1970, stating that her FNCB loan had been paid off, with attached statement of purpose and bank note forms.	deG 1
34.	DeGive letter to CVA, dated February 9, 1954, proposing investment in certain stocks.	CVA335
35.	DeGive letter to CVA, dated June 10, 1954, requesting approval of \$60,000 investment.	CVA336
36.	DeGive letter to CVA, dated September 10, 1954, re market and proposing conversation with CVA.	CVA337

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE
APPLICABLE)

- | | | |
|-----|---|--------|
| 37. | DeGive letter to CVA, dated January 18, 1955, re profit-taking in her account and state of market. | CVA338 |
| 38. | DeGive letter to CVA, dated June 15, 1955, re transactions for her and prognosis for market. | CVA339 |
| 39. | CVA letter to deGive, dated June 5, 1955 re Bank's sale of stock and unauthorized loan pay down. | CVA3 |
| 40. | CVA letter to deGive, dated June 7, 1962, requesting deposit of \$21,000 to her account at FNCB. | CVA340 |
| 41. | Watson enclosure letter to deGive, dated September 30, 1954. | CVA341 |
| 42. | DeGive letter to Watson, dated November 19, 1968, explaining lag between securities sale and loan repayment. | CVA342 |
| 43. | CVA letter to Dominick dated April 3, 1970, revoking deGive's power of attorney and requesting cash and securities transfer to BNY. | CVA343 |
| 44. | DeGive letter to CVA, dated August 13, 1969, re current state of her account with handwritten note by CVA. | CVA345 |
| 45. | DeGive letter to CVA, dated November 20, 1969 re profits taken and state of market. | CVA346 |
| 46. | 10/14/68 CVA letter to Muecke (BNY), complaining about delay in transmitting tender information to CVA. | |
| 47. | Letter from the BNY to CVA dated 1/16/68 relating to fees in CVA's custodian account at BNY. | |

<u>EXHIBIT NUMBER FOR IDENTIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUMBER (WHERE APPLICABLE)</u>
48.	Letter dated October 14, 1968, to Mr. Muecke of BNY, from Candace Van Alen.	Jensen 21
49.	Letter dated June 7, 1967 to James H. Van Alen, from David S. Gamble of BNY suggesting meeting.	Jensen 22
50.	Letter dated March 7, 1967, to Mr. and Mrs. James H. Van Alen from Alan Schumacher of BNY suggesting meeting.	Jensen 23
51.	Handwritten letter from CVA to McLean, dated February 2, 1970, re loan liquidation and activity fee at FNCB.	McMahon 27
52.	Letter, dated February 10, 1970, to CVA from Green (FNCB) explaining activity fee charges.	McMahon 29
53.	Letter dated January 27, 1970, to CVA from McMahon, re activity fee charges at FNCB.	McMahon 30
54.	Single sheet of paper headed "Candace Van Alen," prepared by Watson 10/29/69 - list of CVA stock transactions.	Watson 1
55.	Six-page handwritten schedule prepared by Watson showing CVA stock transactions, October 1969 to February 1970.	Watson 2-7
56.	Watson letter to deGive, dated October 1, 1953, re income check	CVA4
57.	Watson letter to deGive, 1/31/65 re Life Assurance of Pennsylvania stock.	Watson 8
58.	Watson letter to deGive, dated July 27, 1968, enclosing checks for \$20,000.	CVA6
59.	Watson letter to deGive, dated November 18, 1968, re interest charged on loan.	CVA7

<u>EXHIBIT NUMBER FOR IDEN- TIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUM- BER (WHERE APPLICABLE</u>
60.	Watson letter to BNY, 10/10/68, re interest rate.	Watson 14
61.	Watson letter to FNCB, 1/19/70, re activity fee.	Watson 16
62.	Series of eleven letters from CVA to BNY authorizing trans- fer of funds from one account to another.	
63.	List of transactions in CVA's account at Empire Trust during the year 1962. (Produced by plaintiff).	
64.	1965 tax return, with attachments, of Candace and James Van Alen.	
65.	1966 tax return, with attachments, of Candace and James Van Alen.	
66.	1967 tax return, with attachments, of Candace and James Van Alen.	
67.	1968 tax return, with attachments, of Candace and James Van Alen.	
68.	1969 tax return, with attachments, of Candace and James Van Alen.	
69.	1970 tax return with attachments, of Candace and James Van Alen.	
70.	List of assets in Candace Van Alen's lien account at BNY (#44561), showing principal cash balance as of April 16, 1970.	Jensen 16
71.	List of assets held in Candace Van Alen's account at BNY (#44560), as of May 6, 1969.	Jensen 17
72.	Three page document, listing stocks held in CVA's portfolio at FNCB as of December 10, 1969.	McMahon 21
73.	February, 1970 statement, re- lating to CVA account at FNCB.	
74.	FNCB computer printout containing CVA tax information for 1969 [document erroneously dated "1968"].	

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE)

75. 12/31/68-4/30/70 Monthly statements for Margaret L. Bruguiera trust for benefit of James H. Van Alen at U.S. Trust Company.
76. "Cash Ledger" and Monthly statements for account at U.S. Trust Company entitled: u/w James J. Van Alen For James H. Van Alen's, covering the period from 12/31/64 through 5/29/70.
77. "Cash Ledger" and Monthly statements for account entitled "u/w Frederick W. Vanderbilt for James H. Van Alen Paragraph 8TH-G" at U.S. Trust Company covering the period from 12/12/69 through 3/12/70.
78. "Cash Ledger" and Monthly statements for the account at U.S. Trust Company entitled "u/w Frederick W. Vanderbilt for James H. Van Alen's, covering the period from 3/11/65 through 1/29/71.
79. Statements of Assets, for the year 1966, relating to James H. Van Alen's custodian account at Empire Trust and BNY.
80. Schedule of Property dated 1/28/69 in James Van Alen's account (#873822) at U.S. Trust Company.
81. Lists of assets dated March 20, June 20, September 20 and December 20, 1967, relating to the custodian account of James Van Alen at BNY.
82. Monthly statements relating to James Van Alen's account at Dominick for the period February 11, 1969 through March 31, 1970, covering the periods ending:

2/28/69

3/28/69

4/30/69

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE

- 5/39/69
6/30/69
7/31/69
8/29/69
9/30/69
11/02/69
11/28/69
12/31/69
1/30/70
2/27/70
3/31/70
83. Statement of Assets dated 6/30/66 relating to custodian account of CVA at Empire Trust Company.
84. 4/9/53 letter from Gordon Murphy to Paul deGive informing him of Van Alen's high tax bracket.
85. Schedule D, with attachments, to the 1969 tax return of Paul and Eleanor deGive.
86. Schedule D to CVA's 1971 tax return.
87. Document listing Lowry's Reports' "buy" and "sell" signals during the period February 10, 1969 through March 5, 1970.
88. Chart depicting the movement of the Dow Jones Industrials average during 1969.
89. Chart depicting the movement of the Dow Jones Industrials average during 1970.
90. Listing of the Daily Closing Dow Jones Averages for all trading days in 1969.
91. Listing of the Daily Closing Dow Jones Averages for all trading days in 1970.

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE)

- | | | |
|------|---|--------|
| 92. | Workpapers consisting of twenty-three pages, prepared by Dominick and listing Eleanor deGive's transactions at Dominick during complaint period. | deG 63 |
| 93. | DeGive letter to CVA, dated July 7, 1958, referring to discussion of money factors. | deG 67 |
| 94. | Sample confirmation slip with respect to the Bank of New York's account at Dominick relating to a sale on May 27, 1969 of 800 shares of Eckerd Drugs. | |
| 95. | Statement of Assets in CVA's account at Empire Trust, for period ending 12/31/65. | |
| 96. | Typed list of securities transactions in Van Alen's account at Empire Trust Company during March, April and May, 1966 (produced by plaintiff). | |
| 97. | List of Assets in Van Alen's account at BNY, held on October 16, 1968. | |
| 98. | The summaries of transactions referred to in paragraphs 3 and 8 of the pre-trial order. | |
| 99. | CVA letter to deGive dated 8/19/54. | |
| 100. | Watson letter to deGive dated 11/18/68 complaining of delay in repayment of loan. | CVA8 |
| 101. | Two-page typed list entitled "Cost Values of Securities In Van Alen Accounts with Empire Trust Company" (produced by plaintiff). | |
| 102. | Single page dated 3/12/64 entitled "Candace Van Alen Common Stock Holdings - Empire Trust Company (produced by plaintiff). | |

EXHIBIT
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DESCRIPTION OF EXHIBITS

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- | | | |
|------|---|------------|
| 103. | Single page entitled "Candace Van Alen - Bank of New York dated May 3, 1968, listing securities (produced by plaintiff). | |
| 104. | Single typed page dated October 20, 1969 bearing the heading "Candace Van Alen - Dominick & Dominick" listing various transactions (produced by plaintiff). | |
| 105. | Two typed pages dated October 20, 1969 bearing the heading "Candace Van Alen - Bank of New York" listing various transactions (produced by plaintiff). | |
| 106. | Internal memorandum prepared by Douglas Brown of BNY explaining CVA's transfer to FNCB. | Jensen 6 |
| 107. | Letter of Instructions relative to CVA custodian account at FNCB dated October 24, 1969. | McMahon 2 |
| 108. | Memorandum dated October 24, 1969 from Stafford McClean of FNCB re CVA and JVA. | McMahon 26 |
| 109. | Watson letter to deGive dated 7/11/65 re fractional shares of stock. | Watson 9 |
| 110. | DeGive letter to Watson 6/3/55 re Missouri Pacific Railroad. | Watson 11 |
| 111. | Letter from Hunt of BNY to Watson dated 10/14/68, re interest rate. | Watson 15 |
| 112. | CVA 1969 diary. | CVA344 |
| 113. | CVA's 1969 appointment calendar. | CVA348 |
| 114. | CVA's 1970 "Deductible" diary. | CVA349 |

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115.

CVA's 1970 appointment
calendar.

CVA350

116.

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

October 22, 1962
 January 7, 1963
 January 14, 1963
 January 28, 1963
 February 4, 1963
 February 11, 1963
 February 18, 1963
 February 25, 1963
 March 4, 1963
 March 11, 1963
 March 18, 1963
 March 25, 1963
 April 8, 1963
 April 15, 1963
 April 22, 1963
 April 29, 1963
 May 6, 1963
 May 13, 1963
 May 20, 1963
 May 27, 1963
 June 3, 1963
 June 10, 1963
 June 17, 1963
 July 1, 1963
 July 8, 1963
 July 15, 1963
 July 22, 1963
 August 5, 1963
 August 19, 1963
 August 26, 1963
 September 3, 1963
 September 9, 1963
 September 16, 1963
 September 23, 1963
 September 30, 1963
 October 7, 1963
 October 14, 1963
 October 21, 1963
 October 28, 1963
 November 4, 1963
 November 11, 1963
 November 18, 1963
 November 26, 1963
 December 9, 1963
 December 16, 1963
 December 23, 1963

EXHIBIT
NUMBER
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TIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

January 6, 1964
January 13, 1964
January 20, 1964
January 27, 1964
February 3, 1964
February 10, 1964
February 17, 1964
February 24, 1964
March 2, 1964
March 9, 1964
March 16, 1964
March 23, 1964
March 30, 1964
April 6, 1964
April 13, 1964
April 20, 1964
April 27, 1964
May 4, 1964
May 11, 1964
May 18, 1964
May 25, 1964
June 1, 1964
June 9, 1964
June 15, 1964
June 22, 1964
June 26, 1964
July 13, 1964
July 20, 1964
July 27, 1964
August 3, 1964
August 11, 1964
August 17, 1964
August 24, 1964
August 31, 1964
September 8, 1964
September 14, 1964
September 21, 1964
September 28, 1964
October 5, 1964
October 12, 1964
October 19, 1964
October 26, 1964
November 2, 1964
November 9, 1964
November 16, 1964
November 23, 1964
November 30, 1964

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

December 7, 1964
December 14, 1964
December 21, 1964
December 28, 1964
January 4, 1965
January 11, 1965
January 18, 1965
January 25, 1965
February 1, 1965
February 15, 1965
February 23, 1965
March 1, 1965
March 9, 1965
March 15, 1965
March 22, 1965
March 30, 1965
April 5, 1965
April 13, 1965
April 19, 1965
April 26, 1965
May 3, 1965
May 10, 1965
May 17, 1965
May 24, 1965
June 1, 1965
June 7, 1965
June 14, 1965
June 21, 1965
June 28, 1965
July 6, 1965
July 13, 1965
July 20, 1965
July 27, 1965
August 3, 1965
August 10, 1965
August 16, 1965
August 25, 1965
August 30, 1965
September 7, 1965
September 13, 1965
September 20, 1965
September 27, 1965
October 4, 1965
October 11, 1965
October 18, 1965
October 25, 1965
November 1, 1965
November 8, 1965
November 15, 1965

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

November 22, 1965
November 29, 1965
December 7, 1965
December 13, 1965
December 20, 1965
December 27, 1965
January 3, 1966
January 10, 1966
January 17, 1966
January 24, 1966
January 31, 1966
February 7, 1966
February 14, 1966
February 21, 1966
March 1, 1966
March 7, 1966
March 14, 1966
March 21, 1966
March 28, 1966
April 4, 1966
April 11, 1966
April 16, 1966
April 25, 1966
May 2, 1966
May 9, 1966
May 16, 1966
May 23, 1966
May 31, 1966
June 6, 1966
June 13, 1966
June 20, 1966
June 28, 1966
July 12, 1966
July 20, 1966
July 27, 1966
August 2, 1966
August 10, 1966
August 17, 1966
August 30, 1966
September 7, 1966
September 19, 1966
September 26, 1966
October 3, 1966
October 10, 1966
October 24, 1966
October 31, 1966
November 7, 1966
November 14, 1966
November 21, 1966

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER (WHERE
APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

November 28, 1966
December 5, 1966
December 12, 1966
December 19, 1966
December 27, 1966
January 3, 1967
January 9, 1967
January 16, 1967
January 23, 1967
January 30, 1967
February 6, 1967
February 27, 1967
March 6, 1967
March 13, 1967
March 20, 1967
March 28, 1967
April 3, 1967
April 11, 1967
April 17, 1967
April 24, 1967
May 1, 1967
May 8, 1967
May 15, 1967
May 22, 1967
May 29, 1967
June 6, 1967
June 13, 1967
June 19, 1967
June 27, 1967
July 11, 1967
July 17, 1967
July 25, 1967
August 1, 1967
August 22, 1967
September 5, 1967
September 12, 1967
September 19, 1967
September 25, 1967
October 2, 1967
October 9, 1967
October 23, 1967
October 30, 1967
November 6, 1967
November 13, 1967
November 20, 1967
November 27, 1967
December 4, 1967
December 11, 1967

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

December 18, 1967
December 28, 1967
January 2, 1968
January 9, 1968
January 16, 1968
January 22, 1968
January 29, 1968
February 5, 1968
February 13, 1968
February 20, 1968
February 26, 1968
March 4, 1968
March 12, 1968
April 1, 1968
April 8, 1968
April 16, 1968
April 22, 1968
April 29, 1968
May 6, 1968
May 13, 1968
May 21, 1968
May 27, 1968
June 3, 1968
June 13, 1968
June 17, 1968
June 24, 1968
July 1, 1968
July 8, 1968
July 16, 1968
July 22, 1968
July 29, 1968
August 5, 1968
August 12, 1968
September 3, 1968
September 9, 1968
September 16, 1968
September 23, 1968
September 30, 1968
October 8, 1968
October 21, 1968
October 28, 1968
November 4, 1968
November 12, 1968
November 18, 1968
November 26, 1968
December 2, 1968
December 10, 1968
December 16, 1968
December 23, 1968

EXHIBIT
NUMBER
FOR IDENTIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUMBER
(WHERE APPLICABLE)

"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

December 30, 1968
January 7, 1969
January 13, 1969
January 21, 1968
January 27, 1969
February 3, 1969
February 11, 1969
February 17, 1969
February 24, 1969
March 4, 1969
March 17, 1969
March 24, 1969
April 2, 1969
April 8, 1969
April 15, 1969
April 21, 1969
April 30, 1969
May 5, 1969
May 12, 1969
May 19, 1969
May 26, 1969
June 3, 1969
June 9, 1969
June 16, 1969
June 30, 1969
July 8, 1969
July 15, 1969
July 22, 1969
July 29, 1969
August 12, 1969
August 19, 1969
August 26, 1969
September 2, 1969
September 8, 1969
September 15, 1969
September 22, 1969
September 29, 1969
October 6, 1969
October 13, 1969
October 20, 1969
October 27, 1969
November 5, 1969
November 10, 1969
November 17, 1969
November 24, 1969
December 1, 1969
December 9, 1969
December 15, 1969
December 22, 1969
December 29, 1969

EXHIBIT
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EXHIBIT NUM-
BER (WHERE
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"Technical Comments",
i.e., deGive market letters,
bearing the following dates:

January 5, 1970
January 12, 1970
January 19, 1970
January 26, 1970
February 2, 1970
February 11, 1970
February 16, 1970
February 24, 1970
March 2, 1970
March 10, 1970
March 17, 1970
March 25, 1970

EXHIBIT
NUMBER
FOR IDENTI-
FICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

- | | | |
|------|--|--------|
| 117. | Degive's large scroll-type technical chart, covering the period January, 1965-March, 1970. | deG 17 |
| 118. | 1966 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it. | |
| 119. | 1967 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it. | |
| 120. | 1968 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it. | deG 18 |
| 121. | 1969 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it. | deG 20 |
| 122. | 1970 technical chart prepared by deGive, with red, blue and green lines and pencilled lines on it. | deG 22 |
| 123. | 1933 daily graph of Buying Power v. Selling Pressure prepared by Lowry's Reports, Inc. | |
| 124. | Lowry's chart for 1934 | |
| 125. | Lowry's chart for 1935 | |
| 126. | Lowry's chart for 1936 | |
| 127. | Lowry's chart for 1937 | |
| 128. | Lowry's chart for 1938 | |
| 129. | Lowry's chart for 1939 | |
| 130. | Lowry's chart for 1940 | |
| 131. | Lowry's chart for 1941 | |
| 132. | Lowry's chart for 1942 | |

EXHIBIT
NUMBER
FOR IDENTI-
FICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

133.	Lowry's chart for 1943	
134.	Lowry's chart for 1944	
135.	Lowry's chart for 1945	
136.	Lowry's chart for 1946	
137.	Lowry's chart for 1947	
138.	Lowry's chart for 1948	
139.	Lowry's chart for 1949	
140.	Lowry's chart for 1950	
141.	Lowry's chart for 1951	
142.	Lowry's chart for 1952	
143.	Lowry's chart for 1953	
144.	Lowry's chart for 1954	
145.	Lowry's chart for 1955	
146.	Lowry's chart for 1956	
147.	Lowry's chart for 1957	
148.	Lowry's chart for 1958	
149.	Lowry's chart for 1959	
150.	Lowry's chart for 1960	
151.	Lowry's chart for 1961	
152.	Lowry's chart for 1962	
153.	Lowry's chart for 1963	
154.	Lowry's chart for 1964	
155.	Lowry's chart for 1965	
156.	Lowry's chart for 1966	
157.	Lowry's chart for 1967	
158.	Lowry's chart for 1968	deG 19
159.	Lowry's chart for 1969	deG 21
160.	Lowry's chart for 1970	deG 23

EXHIBIT
NUMBER
FOR IDEN-
TIFICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

161.	Technical chart relating to Dow Jones Industrials for 1962.	
162.	Technical chart relating to Dow Jones Industrials for 1963.	
163.	Technical chart relating to Dow Jones Industrials for 1964.	
164.	Technical chart relating to Dow Jones Industrials for 1965.	
165.	Technical chart relating to Dow Jones Industrials for 1966.	
166.	Technical chart relating to Dow Jones Industrials for 1967.	
167.	Technical chart relating to Dow Jones Industrials for 1968.	deG 27
168.	Technical chart relating to Dow Jones Industrials for 1969.	deG 31
169.	Technical chart relating to Dow Jones Industrials for 1970.	deG 35
170.	Technical chart relating to Dow Jones Industrials [Average] for 1958 ("6 weeks moving average").	
171.	Technical chart relating to Dow Jones Industrials Average for 1959 ("6 weeks average").	
172.	Technical chart relating to Dow Jones Industrials Average for 1958.	
173.	Technical chart relating to Dow Jones Industrials Average for 1959.	
174.	Technical chart relating to Dow Jones Industrials	

EXHIBIT
NUMBER
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TIFICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUM-
BER (WHERE
APPLICABLE

175.	Technical chart relating to Dow Jones Industrials Average for 1961.	
176.	Technical chart relating to Dow Jones Industrials Average for 1962.	
177.	Technical chart relating to Dow Jones Industrials Average for 1963.	
178.	Technical chart relating to Dow Jones Industrials Average for 1964.	
179.	Technical chart relating to Dow Jones Industrials Average for 1965.	
180.	Technical chart relating to Dow Jones Industrials Average for 1966.	
181.	Technical chart relating to Dow Jones Industrials Average for 1967.	
182.	Technical chart relating to Dow Jones Industrials Average for 1968.	deG 24
183.	Technical chart relating to Dow Jones Industrials Average for 1969.	deG 28
184.	Technical chart relating to Dow Jones Industrials Average for 1970.	deG 32
185.	Technical chart relating to Dow Jones Railroad Average for 1958.	
186.	Technical chart relating to Dow Jones Railroad Average for 1959.	
187.	Technical chart relating to Dow Jones Railroad Average for 1960.	
188.	Technical chart relating to Dow Jones Railroad Average for 1961.	

EXHIBIT
NUMBER
FOR IDENTIFICATIONDESCRIPTION OF EXHIBITSDEPOSITION
EXHIBIT NUMBER
(WHERE
APPLICABLE)

189.	Technical chart relating to Dow Jones Railroad Average for 1962.	
190.	Technical chart relating to Dow Jones Railroad Average for 1963.	
191.	Technical chart relating to Dow Jones Railroad Average for 1964.	
192.	Technical chart relating to Dow Jones Railroad Average for 1965.	
193.	Technical chart relating to Dow Jones Railroad Average for 1966.	
194.	Technical chart relating to Dow Jones Railroad Average for 1967.	
195.	Technical chart relating to Dow Jones Railroad Average for 1968.	deG 26
196.	Technical chart relating to Dow Jones Railroad Average for 1969.	deG 30
197.	Technical chart relating to Dow Jones Railroad Average for 1970.	deG 34
198.	Technical chart relating to Dow Jones Utilities Average for 1958.	
199.	Technical chart relating to Dow Jones Utilities Average for 1959.	
200.	Technical chart relating to Dow Jones Utilities Average for 1960.	
201.	Technical chart relating to Dow Jones Utilities Average for 1961.	
202.	Technical chart relating to Dow Jones Utilities Average for 1962.	

<u>EXHIBIT NUMBER FOR IDEN- TIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUM- BER (WHERE APPLICABLE</u>
203.	Technical chart relating to Dow Jones Utilities Average for 1963.	
204.	Technical chart relating to Dow Jones Utilities Average for 1964.	
205.	Technical chart relating to Dow Jones Utilities Average for 1965.	
206.	Technical chart relating to Dow Jones Utilities Average for 1966.	
207.	Technical chart relating to Dow Jones Utilities Average for 1967.	
208.	Technical chart relating to Dow Jones Utilities Average for 1968.	deG 25
209.	Technical chart relating to Dow Jones Utilities Average for 1969.	deG 29
210.	Technical chart relating to Dow Jones Utilities Average for 1970.	deG 33
211.	DeGive's loose-leaf notebook sheets bearing columns relating to various stock data and indices.	deG 36
212.	Technical chart relating to Chromalloy in 1968.	deG 39
213.	Technical chart relating to Chrysler in 1968.	deG 40
214.	Technical chart relating to Eastern Airlines in 1968.	deG 41
215.	Technical chart relating to Fansteel in 1968.	deG 42
216.	Technical chart relating to Itek in 1968.	deG 43

<u>EXHIBIT NUMBER FOR IDEN- TIFICATION</u>	<u>DESCRIPTION OF EXHIBITS</u>	<u>DEPOSITION EXHIBIT NUM- BER (WHERE APPLICABLE</u>
217.	Technical chart relating to Ogden Corporation for 1968.	deG 44
218.	Technical chart relating to Pan American World Airways in 1968.	deG 45
219.	Technical chart relating to Raytheon for 1968.	deG 46
220.	Technical chart relating to TGS for 1968.	deG 47
221.	Technical chart relating to TWA for 1968.	deG 48
222.	Technical chart relating to Zenith Radio for 1968.	deG 49
223.	Technical chart relating to Litton Industries for 1968.	deG 50
224.	Technical chart relating to Teledyne Inc. for 1968.	deG 51
225.	Technical chart relating to EG&G, Inc. for 1968.	deG 52
226.	Technical chart relating to Sanders Associates for 1968.	deG 53
227.	Binders containing approximately 1,500 deGive technical charts, similar to those above, pertaining to various individual stocks: A. For the year 1967, B. For the years 1968-1969, C. For the years 1970-1971.	
228.	3-Trend Security Charts, 1968.	deG 56
229.	3-Trend Security Charts, 1969.	

EXHIBIT
NUMBER
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TIFICATION

DESCRIPTION OF EXHIBITS

DEPOSITION
EXHIBIT NUM-
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230. Confirmation slips for each transaction in the account at Dominick of James H. Van Alen for the period February 11, 1969 through March 1970.
231. "Schedule of Property" dated August 13, 1970 relating to account number 873822 of James H. Van Alen at United States Trust Company.
232. "Cash Ledger" and Monthly Statements for account number 873822 of James H. Van Alen at United States Trust Company covering the period January 1965 through March 1970.
233. Letter dated March 8, 1974 from Philip Greenberg of Kamerman & Kamerman to Vincent R. FitzPatrick, Jr. of White & Case.
234. 1963 technical chart prepared by Paul deGive with red, blue, green and pencilled lines.
235. 1964 technical chart prepared by Paul deGive with red, blue, green and pencilled lines.
236. 1965 technical chart prepared by Paul deGive with red, blue, green and pencilled lines.
237. "Contact Report" from F. E. Reed to Bank of New York Credit Department dated January 13, 1967.
238. "Contact Report" from Wyndham R. Hunt to Bank of New York Credit Department dated April 10, 1968.

EXCERPTS FROM TRANSCRIPT OF THE PRO-
CEEDINGS OF U.S. DISTRICT COURT HELD
ON NOVEMBER 8-12 AND 15-17, 1976

(Pages A-152 to A-771 following)

1
2 exhibits which are simply impossible to duplicate because
3 of size, color, or the voluminous nature of them?

4 THE COURT: Thank you. Do I understand
5 correctly that the plaintiff has no objection to the
6 defendants' proposed supplement to the pretrial order?

7 MR. SHAFFER: That is right, your Honor.

8 THE COURT: May I ask Mr. Shaffer, how long do
9 you anticipate the plaintiff's case will take?

10 MR. SHAFFER: Your Honor, in the pretrial order
11 it has been provided that we would do it within four days,
12 and I am hopeful to beat that mark, your Honor, and I am
13 going to do everything I can.

14 THE COURT: All right, sir.

15 MR. SHAFFER: Your Honor, would you like a brief
16 opening?

17 THE COURT: We will get to that. I have a few
18 items here that I have to cover.

19 Do I understand from counsel for the plaintiff
20 that, to the extent we are concerned with rules violations,
21 we are concerned with Rule 342, supervision, and Rule 405,
22 diligence-suitability, and Rule 408, duties with respect
23 to discretionary accounts?

24 MR. SHAFFER: That is correct, your Honor. And
25 the memorandum circular that was issued under 408 as a

1
2 supplement, which did not have the effect of a rule but,
3 as I understand it, was an advice recircular from the
4 New York Stock Exchange in 1961.

5 THE COURT: Addressing Mr. Barist, do I
6 understand that there is an issue outstanding on an
7 evidentiary question, and that is whether or not any or
8 all of these rules should be in the case during trial?

9 MR. BARIST: That is correct, your Honor. It
10 is defendants' position that these rules are not in the
11 case.

12 THE COURT: Predicated upon?

13 MR. BARIST: Predicated upon the following, your
14 Honor. The rules initially came into sharp focus with
15 plaintiff's submission of their third amended complaint,
16 which your Honor gave them permission to plead, that
17 pleaded, the third count, the violation of the very rules
18 Mr. Shaffer has just referred to. The Court then received
19 motions for summary judgment from the plaintiff, and the
20 defendants' cross-motion for summary judgment to dismiss
21 the fifth count, and your Honor granted our motion.

22 Plaintiff's counsel has submitted in the
23 memorandum which we received on Friday an excerpt from your
24 Honor's decision.

25 I respectfully submit -- and I don't mean to be

1
2 impertinent and suggest that I know your Honor's decision
3 better than your Honor does -- that they have omitted the
4 crucial portion of your Honor's decision, because they
5 quote the portion from your Honor's decision which says,
6 "It would seem that it is plaintiff's position that a
7 technical violation of these rules, without more, would
8 give rise to an action for damages. But this Court does
9 not understand such to be the law. See cases cited
10 supra."

11 Your Honor went on in that decision to hold as
12 follows. After considering the theories which the
13 plaintiff had put forward, and I will quote from the last
14 sentence of your Honor's decision, "Having reviewed the
15 documents submitted on this motion, the Court finds that
16 there is no material issue on this question of causation
17 between the purported violations of the rules and the
18 losses allegedly incurred and that these losses in the
19 stock market were not brought about by the alleged failure
20 to comply with the rules in question."

21 In short, as I understand your Honor's decision,
22 your Honor said that, even if the rules were violated,
23 these technical violations -- and we are talking about
24 technical violations -- have nothing to do with the damages
25 claimed by the plaintiff. The only remaining way they are

1
2 trying to put these rules in is by claiming it was fraud
3 on the part of the defendant not to reveal that these
4 rules were being violated. Assuming those facts to be
5 true, your Honor's holding on causation is doubly
6 pertinent when we are talking about fraud, where the
7 cases tell us with some clarity that there must be a
8 direct causal connection between the fraud alleged and
9 the damage claimed.

10 For example, your Honor, since we are in common
11 law fraud here, I refer respectfully to the cases in our
12 pretrial memorandum beginning with page 6, on the quotation
13 from Prosser's work on tort and to the case, the Botwin
14 case, which is discussed at some length in our memorandum.

15 I would also supplement our memorandum by the
16 following citation, and that is, what they are really
17 trying to do here is turn an alleged breach of contract
18 into fraud, and I would state that that on its face does
19 not state a cause of action.

20 I respectfully refer your Honor to a case
21 entitled Miller v. Volk & Huxley, 44 A D 2d 810, in the
22 First Department, in 1975. If your Honor wishes, I can
23 hand up a copy of that decision to your Honor today.

24 THE COURT: No. The bottom line of what you are
25 saying is that you believe that plaintiff should not be

1
2 permitted to introduce evidence with respect to these
3 alleged violations in connection with any of the remaining
4 counts.

5 MR. BARIST: That is correct, your Honor.

6 THE COURT: I have considered the matter over
7 the weekend and I rule that evidence may be offered with
8 respect to the other counts, notwithstanding the language
9 of the Court on the count 5 matter.

10 I don't believe that it is necessary to have
11 opening statements. You have submitted your memoranda.
12 Why don't we just begin with the trial. Mr. Shaffer,
13 please proceed.

14 MR. SHAFFER: Your Honor, so that you may know
15 what the order of the day is, we plan to call as our first
16 witness the plaintiff herself, and we anticipate the
17 cross-examination of the plaintiff and her direct
18 testimony will exhaust the day. If it does not, we have
19 another witness in the wings who is a short witness.
20 Tomorrow we plan to call Mr. deGive, and the defendants
21 have graciously consented to produce him. I don't know
22 how long your Honor does plan to sit, but I am assuming
23 it is 4:30.

24 THE COURT: That is correct. There is another
25 matter. I have a jury deliberating --

me when it was you think you met Mr. deGive at your Millbrook home.

A I believe it was in '53.

Q Do you know what time of the year it was? Do you remember what color the leaves were or whether there were leaves on the trees?

A I think it was in the autumn, but it's so long ago.

Q Have you said who was present at that meeting?

A Mr. Van Alen and myself.

Q deGive came then by prearrangement?

A Oh, yes.

Q I was asking you, did the time come when the conversation turned away from some social purpose to some other purpose?

A Yes.

Q Tell us as best you recollect everything that was said by Mr. deGive and your husband and yourself, the substance of what was said.

A Mr. Van Alen had given me some money just after we were married, because he wanted me to have some means of livelihood, existence, because he is the recipient of trust funds which would bypass me --

MR. BARST: Excuse me, your Honor, I think the

question was, what was said at that meeting, and we are getting off the question.

THE COURT: Yes. But before you go further, when were you married?

THE WITNESS: 1948, 8th of November.

Q Just tell his Honor and Mr. Barist what was said at that meeting.

A My husband said, told me Mr. deGive was a friend of his and he admired him very much and he was a stockbroker at Dominick & Dominick.

Q Your husband said that in the presence of the three of you?

A Yes.

Q What else did your husband say with respect to the fact, if anything, that he had given you some money?

A He wanted deGive to handle the money he had given me.

Q At that point did he tell deGive that he had given you money?

A Yes, he did.

Q Did he tell him how much he had given?

A Yes.

Q How much did he say he had given you?

A \$200,000.

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Q Did he tell deGive when he had given you the money?

A After we were married.

Q And you were married when?

A 1948.

Q What did you do with this money? Did you have it in a paper bag in your pocket from 1948 up until the time deGive came to this meeting?

A It was in a bank called the Empire Trust Company.

Q In what kind of account?

A Custody account.

Q What did deGive understand from your husband, if anything, that is, what did your husband say to him with respect to why he had given you the money?

A So I would have something --

Q Did your husband tell him why?

A Yes. My husband told him that his own position was the trust funds would bypass me and go directly to his children.

Q What trust fund are you talking about?

A The Van Alen, whatever money my husband had.

Q Did your husband explain his financial situation to deGive at that time?

1 securities shall be credited to my custodian account in
2 the trust department."

3
4 Q Mrs. Van Alen, you testified to his Honor that
5 you were married to Mr. Van Alen in 1948.

6 A Correct.

7 Q Had you been married before?

8 A Yes, I had.

9 Q To whom were you married before?

10 A Calvin Cox Vanderlip.

11 Q That marriage was terminated?

12 A Correct.

13 Q As a result of the termination of that
14 relationship, had you had some sort of stock brokerage
15 account?

16 A Yes.

17 Q Where was that account?

18 A Baker Weeks & Hardin.

19 Q Roughly, when was it that that account came into
20 existence?

21 A Late '45 or '46.

22 Q Were you overseas at the time?

23 A I was.

24 Q Where were you?

25 A I was a war correspondent stationed in France.

XXX

(Plaintiff's Exhibit 28 received in evidence.)

Q Mrs. Van Alen, with respect to the Baker Weeks Hardin money now at Dominick & Dominick, what did you understand Mr. deGive's power to be in that account?

A His power was absolute that he could do, buy, sell, the same as the account at the Empire Trust Company, but that it was not held at the bank.

Q You mean the Baker Weeks Hardin money was actually in a securities account at Dominick?

A At the brokerage house, yes.

Q At this point did you have any other accounts?

A No.

Q Of a security nature?

A No, I did not.

Q Did you have any other money that was your own --

A No.

Q -- other than in these accounts?

A No, that was those two accounts was the only money I had.

Q Back at Millbrook did you make any statement to Mr. deGive or did your husband as to why you wanted the Empire Trust Company account and later the Baker Weeks Hardin account to be in Mr. deGive's control?

A Yes, so he could look after it and hopefully

1 build it up, protect it so it didn't shrink, for my old
2 age, because it was the only money I had.

3 THE COURT: Excuse me. Is this now something
4 that was in the witness' mind that represents her
5 intention, or is this something she is saying she told
6 somebody?
7

8 Q I asked the question was anything expressed to
9 Mr. deGive at that Millbrook meeting as to why the Empire
10 Trust Company account was being turned over to his
11 discretion and control? Yes or no.

12 A Yes.

13 Q What was said to Mr. deGive that you recall as
14 to why this was going to be done?

15 A This account was being turned over to his care
16 so I would have some money for my old age.

17 Q Any other reasons of a practical nature?

18 A And because I wouldn't be getting anything from
19 my husband's estate. That's all the money I would have.

20 Q Any other reason of a practical nature?

21 A And that he should try to nurture it.

22 Q Any other reason of a day-to-day practical nature,
23 like travel?

24 A Oh, well, I obviously, yes, I don't know anything
25 about the stock market. I couldn't do anything about it.

Q Did there come another time when Mr. deGive discussed with you a margin account?

A I don't recall that he discussed a margin account.

Q Well, I am going to show you what has been marked for identification Plaintiff's Exhibit No. 29.

MR. SHAFFER: Mr. Clerk, would you give his Honor Defendants' Exhibit 3.

Q I ask if you would look at the second page of that exhibit and tell me if you recognize any signature that appears on that page.

A I recognize my signature.

Q Did you sign it?

A I signed it.

Q Do you see any other signature on that page you know?

A Mr. deGive's signature.

Q Did you see him sign it?

A I don't recall.

Q By this time had you come to know his signature or don't you even know it today?

A No, I don't know it today.

MR. SHAFFER: I offer that in evidence, your Honor, and I understand there is no objection.

MR. BARIST: That is correct.

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(Plaintiff's Exhibit 29 received in evidence.)

THE COURT: Proceed.

Q Mrs. Van Alen, read the date of that to his Honor.

A The date it was signed?

Q Yes.

A It says the 16th of May, 1963.

Q In or about the 16th of May, 1963, do you recall any new account that you started with Mr. deGive that was different than the ones that you told his Honor about up until now?

A No, I don't.

Q Do you know what a margin account is?

A I do now.

Q Did you know then?

A No.

Q When did you learn, if ever, that you opened a margin account?

A Just since this trial started, this investigation.

Q When you signed this agreement, the customer's agreement, did you read it?

A I presume I did. I was always told to read everything before I signed it.

Q Look at it and tell his Honor when it is you recall reading it.

1 [47] Q Mrs. Van Alen, tell me what he said --

2 A He said he --

3 Q -- with respect to anything he had done about
4 perfection, if he said anything.

5 A Yes. He said he had it perfected. He was very
6 proud of it.

7 Q Did you finish? I did not mean to --

8 A He took me in there especially to show to me,
9 because he was proud of it.

10 Q Did he tell you anything else with respect to
11 that machine as to what he could do with it?

12 A He could see what was going to happen in the
13 stock market.

14 Q That is what he told you?

15 A Yes.

16 Q Did you believe him?

17 A Yes, I did.

18 Q From time to time from that point on -- when was
19 that you said -- that was the Mets won -- what day was that?

20 A October.

21 Q Of 1969?

22 A Yes.

23 Q Not with respect to that date, before that date,
24 had you had any description of this machine from deGive?
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A Yes.

Q From his description what did he tell you with respect to being in the market or not being in the market?

A He would quote what his indicators were telling him.

THE COURT: What his what?

THE WITNESS: Quote what his indicators.

Q How did he tell you what he would quote what his indicators? Would he give you specific numbers and tell you that on graph such-and-such he saw such-and-such? What would he tell you?

A No, he was much more general. He said, "My indicators point to" --

Q What?

A Whatever.

Q Well, tell his Honor what you recall him telling you from time to time.

A Pointing to the time to get in the market or we are going to have money supply, going to do something or other which will cause my indicators to do that. I don't understand those economic things very well.

Q At times would he tell you that it was time to be in the market?

A Yes.

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Q At times would he tell you something else?

A He'd say his indicators said to get out.

Q Did he tell you he was acting accordingly in your account?

A Yes.

Q You were on your way to Europe in October of 1969.

A That's correct.

Q Did you know you were going to Europe when you were down there looking at the black box with the wands?

A Yes.

Q Did he make any reference to that black box and what was in it and your going to Europe at that time?

A Yes, he did.

Q Was that while you were looking at the parade and the machine up there?

A Yes, it was.

Q Tell his Honor what was said by Mr. deGive at that time.

A He said he wanted me to borrow \$200,000 so he could invest in the market while I was gone.

Q You had \$200,000, didn't you?

A I didn't hear the question.

Q I said you had \$200,000, didn't you?

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A No.

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Q You did not at that time? You were not worth \$200,000?

5

A Oh, it was all in stocks.

6

7

Q He wanted you to borrow \$200,000 more and invest \$200,000 more?

8

A That's correct.

9

Q And you did not have \$200,000 more?

10

A No, I didn't.

11

12

Q Did you tell him where you thought you could get it? Did you hear me?

13

A Yes.

14

Q Please answer the question.

15

16

A I don't know that I told him. I think he told me I could get it from the bank and put the stocks up as collateral.

17

18

19

Q What bank did you think that you could get it from?

20

A The Bank of New York.

21

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Q That is a new name to us. When did the Bank of New York come in to have a relationship to some account you had?

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A The Bank of New York bought out the Empire Trust Company or amalgamated it.

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Q So your custody account at the Empire Trust Company came to be handled by some other entity, right?

A That's correct.

Q And that entity was what?

A The Bank of New York.

Q The very first account you had with deGive went to the Bank of New York?

A Eventually, yes.

Q Did you know somebody down at the Bank of New York?

A Yes.

Q Who?

A Mr. Muecke.

Q Who decided to go down to see brother Muecke to borrow the money?

A Mr. deGive said he would like me to arrange it before I went to Europe.

Q When were you going to Europe?

A About a week.

Q And this is when in October?

A About the 20th, I think, something.

Q Of October?

A Something like that, yes.

Q And you expected to be gone by the end of the

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month?

A Oh, yes.

Q How long were you going to be gone for?

A Until before Christmas.

Q Sometime in December?

A Yes. I think we came back about the 15th or
16th of December.

Q Did you go to see Mr. Muecke?

A I called him on the telephone.

Q What did you say to him?

A I asked him to lend me \$200,000 based on the
stocks.

Q What did he say to you?

A Not a chance. No.

Q Had you borrowed from him before?

A We had.

Q Did you pay him back?

A I had.

Q Had you borrowed that much from him before?

A I think maybe once I borrowed that amount.

Q But you did pay him back?

A Yes.

Q Did he tell you why he would not lend you the
\$200,000?

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A He thought the interest rate was too high.

Q Why would he care about that? He is going to receive the interest.

MR. BARIST: I am going to object to that.

MR. SHAFFER: All right, Judge, I withdraw it.

Q What reason did he give you that you could not have the \$200,000?

A The interest rate --

MR. BARIST: Objection, your Honor.

MR. SHAFFER: Why is that?

MR. BARIST: Hearsay.

MR. SHAFFER: New rules say you can have all kinds of hearsay.

MR. BARIST: Not that kind.

THE COURT: Sustained. Unless you want to cite the particular rule, which I will then take a look at.

MR. SHAFFER: Judge, I don't know them that well. I will look it up at lunchtime.

THE COURT: All right.

Q In any event, you did not get the money; right?

A That's correct.

Q Did that upset you?

A Oh, yes, it did.

Q Did you go back to deGive?

1
2 some papers relating to the transaction which the witness
3 has testified and the last page of which she has signed.

4 May I go to the next exhibit, your Honor?

5 THE COURT: You were just referring to
6 Plaintiff's 30.

7 MR. SHAFFER: Now referring to Exhibit 31,
8 which is now in evidence, your Honor, I would like the
9 record to reflect that it is a letter from Mrs. Van Alen,
10 signed Candace Van Alen, to the Bank of New York.

11 (Plaintiff's Exhibit 30 was read by Mr. Shaffer.)

12 Q Mrs. Van Alen, did you prepare that letter?

13 A No.

14 Q Who did?

15 A Mr. Mclean.

16 Q On and after October 24, 1969, you had a new
17 custodian repository?

18 A Correct.

19 Q First National City Bank.

20 A That's right.

21 Q Where you remained until after March 30, 1970.

22 A That's correct.

23 Q Basically this was the money that started out
24 to be for Baker Weeks & Hardin. I take that back. This
25 is the money that started out at the Empire Trust?

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A That's correct.

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Q Went to the Bank of New York and then the First National City Bank?

5

A That's correct.

6

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Q With respect to that account, did you understand at First National City Bank that Mr. deGive would have some power or authority similar or dissimilar to what he had in the Bank of New York?

10

A I understood he'd have identical power.

11

Q Meaning what?

12

13

A That he would have complete control of buying and selling any stocks or bonds I had.

14

Q In that account?

15

A Yes.

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MR. SHAFFER: Your Honor, I direct your attention with respect to Plaintiff's Exhibit 30 to the last page, signed by the plaintiff. I am just reading a portion under the excerpted portion on the last page, Mr. Barist.

21

(Mr. Shaffer read from Plaintiff's Exhibit 30.)

22

THE COURT: I can read the rest.

23

MR. SHAFFER: All right, Judge.

24

25

Q When you signed that, did you read what I just read?

1 [75]
2 the one in 1953 but not signed by the parties; right?

3 THE COURT: Do you have that here now?

4 MR. SHAFFER: Yes, we do.

5 THE COURT: Just one moment, please. Going back
6 to the objection about the witness' understanding with
7 reference to 1953 transfer, 1961, I am going to reverse
8 the ruling, sustain the objection, strike the answer.
9 That does not mean, however, that you cannot go back and
10 with a proper foundation if you can to approach it in
11 some other fashion. But it seems to me that is rather
12 pivotal, and we should be careful.

13 MR. BARIST: So your Honor is clear on the
14 dates, I think Mr. Shaffer misspoke a few moments ago
15 when he referred to 1961 account. There is no 1961
16 account.

17 MR. SHAFFER: Correct. 1963.

18 MR. BARIST: What we have is everything begins
19 in 1963, and in 1963 there is the operating of a margin
20 account as reference to Plaintiff's Exhibit 29.

21 MR. SHAFFER: I stand corrected. Thank you.

22 THE COURT: So instead of 1961 it is 1963.

23 MR. SHAFFER: Yes.

24 THE COURT: Let us proceed.

25 MR. SHAFFER: Your Honor, with respect to the

1963, just so that I understand how to conduct the examination, we have Exhibit 29, and the first sentence of paragraph 2 which your Honor permitted me to read to the witness and ask her questions whether she saw that. I would like at least that much of the record to stand with respect to that transaction.

THE COURT: That may stand.

MR. SHAFFER: Thank you.

Q I am going to refer to Plaintiff's Exhibit 15.

THE COURT: You are referring now to Plaintiff's Exhibit 15 for identification.

MR. SHAFFER: Right, your Honor, and I have asked your clerk to give it to you.

THE COURT: Overnight I will ask you to do the necessary conversions which will expedite this. You may be able to get to some of them at lunch hour and the balance of them at the end of the day.

MR. SHAFFER: May we have just a second, your Honor?

THE COURT: Yes. Perhaps we will take our lunch hour now. It will give you time. We will interrupt and resume at 1:45. That is an hour and fifteen minutes from now.

THE WITNESS: Do I have to eat alone?

[77]

Van Alen - direct

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2 THE COURT: Do you have any requests in that
3 regard?

4 MR. BARIST: No, once a witness is on, nobody
5 talks.

6 MR. SHAFFER: Right.

7 THE COURT: It is satisfactory to the Court if
8 that is what both sides want. If it is unimportant to you,
9 that is all right with me too. But I don't think there
10 should be any discussion once direct examination of a
11 witness has been concluded.

12 MR. SHAFFER: Judge, I like it from the
13 beginning.

14 MR. BARIST: No problem. Once direct examination
15 concludes nobody talks.

16 MR. SHAFFER: No, once they take the stand.

17 MR. BARIST: Fair enough. She is welcome to go
18 out to lunch with Mr. Shaffer.

19 THE WITNESS: Maybe I should go with you, Mr.
20 Barist.

21 MR. BARIST: I would be delighted, but that
22 might get your counsel upset.

23 THE COURT: On the marking of the exhibits, would
24 you confer with the deputy court clerk and my law clerk
25 in terms of the marking so that I can have some understanding

1C

of it.

MR. SHAFFER: I will tell you now, your Honor, we are not going to mark any exhibits that we gave to the Court. That will be in the Court's file, plaintiff's and defendants', to look at. We will mark our own.

THE COURT: Thank you.

(Luncheon recess)

Van Alen - direct

AFTERNOON SESSION

1:55 p.m.

C A N D A C E V A N A L E N, resumed.

DIRECT EXAMINATION (continued)

BY MR. SHAFFER:

Q Mrs. Van Alen, we were discussing, before the lunch break, that in 1953, when you had this discussion with Mr. deGive at Millbrook and you gave him power over your account at the Empire Trust Company and shortly thereafter, in July, when you gave him power over the stocks which had been opened at Dominick & Dominick, using the Baker Weeks Hardin account, did you have a discussion with Mr. deGive on those two occasions about rules, regulations, Securities and Exchange Commission requirements, etc.? Yes or no.

A Yes.

Q What kind of discussions did you have with him?

MR. BARIST: Objection.

THE COURT: No. I will allow that. Maybe you should make it more specific.

What was the discussion?

Q What did he say to you about the subject matters in my question?

MR. BARIST: Excuse me, your Honor. Just for

Van Alen - direct

the record, may I have a standing objection to all testimony on supervising rules in light of your Honor's previous ruling.

THE COURT: Yes. You have a standing objection to it.

MR. BARIST: Any other objection I make on that line of testimony will be based on other grounds and the objection which has previously been overruled by your Honor.

MR. SHAFFER: In fairness to the Court, my question is broader than the supervisory rules.

Q I want to find out from you what if anything Mr. deGive said to you with respect to --

A He said that the account would be in Dominick & Dominick under all the rules of the State of New York and the rules that the brokerages houses worked under.

Q Keep your voice up.

A It would be buttressed by the rules that protected that sort of transaction.

Q That sort of transaction being what sort of transaction?

THE COURT: Before you go on, let the record show that the objection of counsel for the defendant is overruled.

1 [113]
2 Q You have answered the question, unless the
3 Court wants you to speak on, but I do not.

4 THE COURT: You can complete the answer, if it
5 is not complete.

6 THE WITNESS: Your Honor, I was going to say that
7 if I had known this at the time I certainly would have
8 remembered trying to talk to him on the telephone or
9 getting him on the telephone, and I don't recall anything
10 in that summer at all of getting in touch with Mr. deGive
11 and there was certainly no meeting.

12 THE COURT: We will strike that.

13 MR. SHAFFER: Will you leave the "yes," please?

14 THE COURT: Yes. The, quote, "no," you mean?

15 MR. SHAFFER: That is right.

16 THE COURT: All right.

17 Q I believe you testified before lunch about how
18 you made a telephone call with your husband from North
19 Carolina to Mr. deGive in early 1970 and telling him to
20 do what you testified to. Do you remember?

21 A From South Carolina.

22 Q You recall that?

23 A I do.

24 Q In early 1970, other than that telephone call
25 that I just directed your attention to, was there any

1 [114]

Van Alen - direct

A-181

2 communication between you and Mr. deGive face to face or
3 by telephone up to March 2, 1970?

4 A No.

5 Q When you went to South Carolina, you started on
6 a trip which included staying there when in that year? In
7 other words, when did you go away?

8 A I think around the 23rd.

9 Q Of what month?

10 A In '70.

11 Q Yes.

12 A When we went down to South Carolina.

13 Q The 23rd of what month?

14 A January. May have been the 22nd. It was that
15 last week.

16 Q And you remained there until when?

17 A Until about the -- that Sunday after the phone
18 call. The 30th?

19 Q I just wanted to know when your trip began and
20 when it ended.

21 You told me it began the 23rd or 24th of January of
22 1970. When did you get back?

23 A In March.

24 Q What day in March?

25 A The 2nd or 3rd.

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Q During that period of time how many communications did you have with Mr. deGive?

A None.

Q You had a telephone call you just told the judge about.

A Well, just that one phone call, yes.

Q So how many communications did you have with Mr. deGive when you were away?

A One. I'm sorry.

Q Any others?

A No.

Q When you got back on March 2 did you see anything with respect to those March purchases I have just shown you?

A Yes. I don't know if they were the March ones. Let's see. I saw some purchases he had made.

Q Yes, not March purchases. What purchases did you see?

A This is '69.

MR. BARIST: Your Honor, this is what happens when we wander off with this type of leading. She got back on March 2, and I would like to suggest at this point -- well, I withdraw that.

THE COURT: Haven't we been through this? My

notes reflect that --

MR. SHAFFER: I am in another year, Judge.

THE COURT: No. While in the South on or about January 29, 1970, plaintiff and husband called deGive from South Carolina, told him to get out of the market, returned North on or about March 2, and saw a lot of purchase slips, etc.

MR. SHAFFER: Your Honor, you are right, but I am trying to move on to another area.

THE COURT: All right.

Q You got back on or about March 2?

A Yes.

Q After you got back did you notice anything, did anything come to your attention with respect to what Mr. deGive was doing in your account early in March?

A Yes. The sales slips or whatever they call them.

Q Confirmations?

A Confirmations came in.

Q Directing your attention to page 7 of Plaintiff's Exhibit No. 2 in the purchase column, do you see from the third item through the bottom item on the page refers to purchases on March 3, 1970?

A Yes.

1 the Court that you have what you are entitled to. First,
2 you have the representation of counsel, which stands for
3 something. Secondly, you have the testimony of the author
4 of the document under oath, which stands for something.
5 Thirdly, there is the fact that if these matters were
6 of some importance, the matter should have been pursued
7 during the pretrial preparation stage when it was in the
8 hands of the magistrate, and necessary or appropriate
9 sanctions sought pursuant to Rule 37 or otherwise.
10

11 So your application is denied.

12 Can we go forward now?

13 MR. BARIST: Very well, your Honor.

14 Can I continue with my examination of Mrs. Van
15 Alen?

16 THE COURT: Yes. Take the stand, please.

17 C A N D A C E V A N A L E N, resumed.

18 CROSS-EXAMINATION (continued)

19 BY MR. BARIST:

20 THE COURT: You are still under oath, Mrs. Van
21 Alen. Please be seated.

22 Q Backing up to where we were yesterday, Mrs.
23 Van Alen, we had established that you graduated from
24 Vassar in 1933, is that correct?

25 A That's correct.

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Q And we further established that your economics course in Vassar was in the academic year of 1931 to 1932.

A I am sorry, I coughed and I didn't hear what you said.

Q We had further established that the economics course which you had taken at Vassar was in the academic year 1931-32.

A I presume so.

Q We further established that you had not learned about the establishment of the Securities Exchange Commission in 1931 and 1932; is that correct?

A Yes.

Q Did you take any other economics courses at Vassar besides the introductory economics course?

A I probably took one or two semester courses, but at this distance of forty years I don't recall them.

Q After you graduated from Vassar, you did graduate work in Radcliffe?

A That's right.

Q You then did graduate work at the Sorbonne in Paris?

A Correct.

Q And you worked for Vogue and the Herald Tribune as a -- well, you wrote articles for Vogue and the Herald

1 [129]
2 Tribune.

3 A At the Herald Tribune I wrote editorials and I
4 was assistant to the editor.

5 Q You also did an article --

6 A At Vogue I was contributing editor, feature
7 writer.

8 Q But you also did an article on financial
9 affairs, did you not?

10 A Never.

11 Q Didn't you do an article on the California
12 harvest pickers entitled "The Grapes of Wrath That Turned
13 To Champagne," establishing that in your opinion the people
14 who were picking the grapes out in California were making
15 a lot of money while everybody else thought they were
16 destitute?

17 A No. That was an article that I wrote that said
18 that some of them were because there wasn't any income
19 tax connections about any of that, and it was never
20 published.

21 Q Now, going back to --

22 A And I was not employed at any time when I did
23 that.

24 Q It was done as a freelance project?

25 A Yes.

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Q But you obviously thought yourself competent to --

A It had nothing to do with finances. It had to do with the way the people were living out there and migrant workers. Nothing to do with the stock exchange or anything like that.

Q But it did have to do with the general problems of economics, didn't it?

A Well, everything is economic.

Q Just so we can back up here a moment, you gave Mr. deGive a power of attorney -- withdraw that -- you gave Mr. deGive a power over your stocks at the Empire Trust in April of 1953.

A Yes, if that is the date on the paper. If that is the date on the paper, that was the year.

MR. deGIVE: May I have Defendants' Exhibit 53, please.

A That was the year.

Q And, Mrs. Van Alen, the power over the Empire Trust Company is Plaintiff's 27 in evidence? Does that refresh your recollection that that power was given to Mr. deGive on or about April 29, 1953?

A Yes, it does.

Q The Dominick & Dominick account was opened in

July of 1953, is that correct, Mrs. Van Alen?

THE COURT: Unless counsel concedes it. It may be that is conceded.

MR. SHAFFER: It is, your Honor.

THE COURT: It is conceded.

MR. SHAFFER: It is. The exhibit shows it.

THE COURT: Yes.

Q The Bank of New York account was closed on October 24, 1969, is that correct, Mrs. Van Alen?

A I don't remember the date.

Q Can I show you Defendants' 11.

THE COURT: If all of the numbered documents are referred to additionally as for identification or in evidence, it would be helpful for the record and for my sake.

MR. BARIST: I am sorry, your Honor. This is what happened when we transposed yesterday. This is Plaintiff's Exhibit 31 --

MR. SHAFFER: Your Honor, to make things easier, I am going to give Mr. Barist all the documents I marked in evidence yesterday, and he can refer to those. If they help him, fine.

MR. BARIST: Fine. This is Plaintiff's 31 in evidence.

1 [132]
2 Q I show Plaintiff's Exhibit 31 to you and ask
3 you if that refreshes your recollection that the custodian
4 account of the Bank of New York was closed by you on
5 September 24, 1969.

6 MR. SHAFFER: I have no particular objection,
7 Judge, but I just want the record to show that he is
8 taking something from his files that has not been marked.
9 Plaintiff's 31 is on the upper left-hand corner. I assume
10 it is the same document, but I just want you to know in
11 case something comes up.

12 THE COURT: And whenever --

13 MR. BARIST: Since Plaintiff's 31 was
14 Defendants' 11, I am showing her the same document.

15 THE COURT: Perhaps that is conceded as well.

16 MR. SHAFFER: Yes.

17 THE COURT: It is conceded, counselor?

18 MR. SHAFFER: Yes.

19 THE COURT: Next question.

20 Q Now --

21 A This isn't the same paper as I saw yesterday?

22 THE COURT: Next question.

23 Q It is not the same paper?

24 A I am asking you.

25 THE COURT: Just one moment. Next question.

1
2 Whatever the document is, next question. They have
3 conceded on this. Move to the next.

4 THE WITNESS: Oh, all right.

5 Q In October 1969 you gave Mr. deGive a power of
6 attorney over your account at First National City Bank?

7 MR. SHAFFER: Concede that, Judge.

8 THE COURT: All right.

9 MR. BARIST: And that is reflected in
10 Plaintiff's 30 in evidence. Is that conceded, Mr. Shaffer?

11 MR. SHAFFER: Yes, concede that too.

12 MR. BARIST: Thank you.

13 Q On April 3, 1970, did you inform Mr. deGive that
14 you were taking away the account from him at Dominick &
15 Dominick and revoking the power that you had given him
16 over the Dominick & Dominick accounts?

17 THE COURT: Date again?

18 MR. BARIST: April 3, 1970.

19 MR. SHAFFER: Concede that.

20 Q Is Defendants' Exhibit 2 for identification a
21 copy of the letter that you sent to Mr. deGive, Mrs.
22 Van Alen?

23 MR. SHAFFER: Concede that.

24 THE WITNESS: You concede that?

25 MR. SHAFFER: Yes.

THE WITNESS: Mr. Barist, you may have it, then.

THE COURT: All right.

Q By letter dated April 3, 1970, did you inform the First National City Bank that you were revoking the power of attorney you had given to Mr. deGive?

MR. SHAFFER: We concede that.

THE COURT: All right.

MR. BARIST: I would like to offer Defendants' 2 in evidence.

MR. SHAFFER: I have no objection, Judge, if I could just look at it a second.

(Pause)

Yes, your Honor. The copy we have is an unsigned copy, but I am sure it is a copy.

MR. BARIST: You have already conceded that for the record, Mr. Shaffer.

MR. SHAFFER: All right, fine.

THE COURT: Just a moment. Let us get it marked. It is received.

(Defendants' Exhibit 2 received in evidence.)

Q Mrs. Van Alen, is Defendants' Exhibit 14 a copy of the letter you sent to the First National City Bank revoking the power that you had given to Mr. deGive with respect to the accounts at the First National City Bank

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1
2 for securities?

3 MR. SHAFFER: We concede it, Judge.

4 THE COURT: All right.

5 MR. BARIST: I would like the witness' testimony
6 on this, your Honor.

7 THE COURT: You may answer the question.

8 Q Mrs. Van Alen, is that a copy of the letter which
9 you sent to First National City Bank dated April 3, 1970,
10 revoking the power you had given to Mr. deGive with respect
11 to your custodian accounts at First National City Bank?

12 A It is.

13 MR. BARIST: I offer it in evidence, your Honor.

14 MR. SHAFFER: No objection.

15 THE COURT: Received.

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16 (Defendants' Exhibit 14 received in evidence.)

17 Q By letter dated April 3, 1970, did you inform
18 Dominick & Dominick to deliver out of Dominick any
19 securities it held and any cash balances it held and also
20 revoking the power of attorney which you had heretofore
21 given to Paul deGive?

22 A Have you a letter so stating?

23 Q Do you have a recollection, Mrs. Van Alen?

24 A I know that we did that, but I am not sure of
25 the date.

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Q Let me ask you if Defendants' Exhibit 43 for identification is a copy of the letter which you sent to Dominick & Dominick.

A Yes.

MR. BARIST: I offer 43 in evidence, your Honor.

MR. SHAFFER: I have no objection to it.

THE COURT: Received. Defendants' 43 in evidence.

(Defendants' Exhibit 43 received in evidence.)

Q Mrs. Van Alen, yesterday you were testifying with respect to the power you had given to Mr. deGive over your securities accounts. Is it not the fact -- withdraw that.

The power that you gave to Mr. deGive was the power to make purchases and sales in your securities accounts, is that correct?

A That's correct.

Q And that was the sole power he had with respect to those accounts, correct?

A He was in complete charge of the accounts.

Q He was in complete charge of making purchases and sales; correct?

A Yes.

Q He had the power to make purchases and sales;

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1
2 correct?

3 A That's correct.

4 Q But he did not, for example, have the power to
5 take money out of the account, did he?

6 A Well, the income was taken out of the account
7 and sent to my checking account.

8 Q And you instructed the bank to send the income
9 to your checking account; correct?

10 A You are talking about the Empire Trust Company
11 now?

12 Q Yes.

13 A Yes.

14 Q But Mr. deGive did not have the power to take
15 money out of the account and put it in Mr. deGive's
16 checking account; correct?

17 A No.

18 Q You graduated from Vassar in 1933. When you
19 entered Vassar as a freshman in 1929, I assume that was in
20 September of 1929, Mrs. Van Alen.

21 A That's correct.

22 Q Did something happen with respect to the stock
23 market a few months or within a month or two after you
24 entered Vassar?

25 A I believe it did.

1
2 was alive and a young adult in the period of 1929 to 1933
3 knew from very real experience that the stock market could
4 go down as well as up?

5 A I wouldn't know what everyone would know. I
6 only know what I would know.

7 Q Well, did you know that the stock market can go
8 up and down? Did you know that?

9 A Yes.

10 Q Did you know that in 1933?

11 A Yes.

12 Q And did Mr. deGive guarantee you that every
13 decision he made was going to turn out well?

14 A No.

15 Q Isn't it a fact that you knew that he is good
16 but not that good?

17 A Nobody is that good.

18 Q He is only human; right?

19 A That's correct.

20 Q And you knew that.

21 Can I have an answer?

22 A Yes, but he relied on his machine, which he as
23 a human had put together, so he had something extra.

24 MR. BARIST: I move to strike everything
25 beginning with "but he relied."

MR. SHAFFER: I object to that.

THE COURT: No, denied.

Q You mentioned the machine. I just want to see if I can understand it. We will get to it in more order, but as long as you brought it up I thought we should see if we could find out something about this machine."

If I recollect your testimony yesterday, you said it was a black box with wands; is that correct?

A That's correct.

Q Now, when you say a black box, you mean like a filing cabinet or like a desk?

A It looked like a desk.

Q Looked like a desk.

A A box, a table box.

Q A table box. So that is the black box. The wands, were the wands moving and vibrating?

A No, they just ran across. It wasn't a machine that operated. Perhaps the terminology "machine" is wrong. He had a system which interrelated with each other. Perhaps that is why I got the idea it was a machine, because one thing acted upon another.

Q You used the word "wands."

A Yes, that's correct.

Q You did graduate work in English at Radcliffe,

THE WITNESS: Yes, your Honor.

Q There were no flashing lights coming out of this box?

A No.

MR. BARIST: With your Honor's permission, I would like to read a couple of stipulated facts from the pretrial order. May I do so?

THE COURT: Page?

MR. BARIST: That will save some time.

Pretrial Order Stipulated Fact No. 12:

"From 1953 until she closed her account at Dominick & Dominick in April 1970, confirmation slips of all trades made in her account to Dominick were mailed to plaintiff; and monthly statements of plaintiff's account to Dominick which indicated all trading therein were mailed to her after the month involved."

I now offer in evidence Exhibit 16, the monthly statements from Dominick & Dominick, and Exhibit 17, the confirmation from Dominick & Dominick. And to save time we served a notice to admit authenticity upon plaintiffs, and authenticity was admitted.

Because of the bulk of these, your Honor, I did not furnish your Honor a separate copy.

THE COURT: Any objection?

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MR. SHAFFER: Your Honor, I just ask that --

THE COURT: That is Defendants' 16 and
Defendants' 17, both offered into evidence, I gather.

MR. SHAFFER: Your Honor, the only thing I ask
is that, since reference was made to two stipulated facts,
there is a third related fact that deals with the receipt,
and I would like at this time to read that to your Honor.

THE COURT: Which one would that be?

MR. SHAFFER: That is Stipulated Fact 15:

"From 1953 through" --

THE COURT: Well, you don't have to --

MR. BARIST: That is the Empire Trust. We will
come to that. Don't worry about it.

THE COURT: Let us take it one step at a time.

First of all, no objection to the offer of
Defendants' 16 and 17?

MR. SHAFFER: Correct.

THE COURT: Received.

(Defendants' Exhibits 16 and 17 received in
evidence.)

MR. SHAFFER: No objection.

MR. BARIST: I would next like to read Stipulated
Fact 13:

"From 1953 until October 1969, when Van Alen

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1 closed the custodian account at the B.N.Y., confirmation
2 slips of all trades made in the B.N.Y. (Empire Trust)
3 account and monthly statements relating to such account,
4 which indicated all trading therein, were mailed to Van
5 Alen."
6

7 I would now like to offer in evidence
8 Defendants' Exhibits 18, the monthly statements from the
9 B.N.Y., and the advice slips from the B.N.Y. are
10 Exhibit 19. They do not relate back to 1953, your Honor.
11 I believe they relate back as far as 1965. And if I
12 could, your Honor, since your Honor was not involved in
13 this case at this time, I would like to make the following
14 statement to the Court with regard to why the cutoff point
15 on the B.N.Y. records. We had subpoenaed the entire files
16 from B.N.Y. Plaintiff objected. There was a hearing
17 before Judge Harold Tyler while he was still with us.
18 Judge Tyler said, "Look, four or five years is enough.
19 You can get the Bank of New York to go back five years,"
20 which is what we did.

21 So that is the explanation for why we don't go
22 back to 1953 with the bank accounts. Neither plaintiff
23 nor defendants had copies of the bank's records in the
24 past.

25 I would now like to read from pretrial Order,

1 [146]
2 Stipulated Fact 14.

3 THE COURT: Before you do --

4 MR. BARIST: Oh, excuse me?

5 THE COURT: You have an offer of 18 for
6 identification and 19 for identification by the defendants.

7 MR. BARIST: My apology, your Honor. I thought
8 there was no objection.

9 THE COURT: Hearing no objection --

10 MR. SHAFFER: We have no objection.

11 THE COURT: Received. Defendants' Exhibits 18
12 and 19.

13 (Defendants' Exhibits 18 and 19 received in
14 evidence.)

15 MR. BARIST: Reading from Pretrial Order
16 Stipulated Fact 14:

17 "From October 1969 through April 1970, confirma-
18 tion slips of all trades made in the F.N.C.B. account and
19 monthly statements relating to such account, which
20 indicated all trading therein, were mailed to Van Alen."

21 I would now like to offer in evidence
22 Defendants' 20, the monthly statements from F.N.C.B. and
23 Defendants' 21, the confirmation slips.

24 MR. SHAFFER: Judge, I have no objection.

25 THE COURT: Received.

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(Defendants' Exhibits 20 and 21 received in evidence.)

MR. BARIST: I will now read, at Mr. Shaffer's request, Stipulated Fact 15.

"From 1953 through March 1970, the copies of the confirmation slips and monthly statements relating to Van Alen's accounts at the Empire Trust Company - Bank of New York, F.N.C.B. and Dominick, which have been referred to in items (12) through (14) above, were received by Van Alen's employee, Mary Grace Watson."

Q Mrs. Van Alen, Miss Watson was stationed at which one of your residences, Avalon?

A She lives in Newport, Rhode Island.

Q And she worked at your home called Avalon in Newport, Rhode Island?

A She did a great deal of work in her home.

Q But she worked at your home in Rhode Island also, correct?

A Yes.

Q She did not work at your home on Fifth Avenue?

A No.

Q She did not work at your shooting preserve in Millbrook, did she?

A She never left Rhode Island.

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Q She never went to your estate on Long Island, did she?

A No.

Q And she did not accompany you on your travels, correct?

A No, no.

Q Besides Miss Watson, who received a copy of your confirmation slips and monthly statements with respect to your trades?

A I suppose Mr. deGive did.

Q Do you know a man named Orrie Stevens?

A Yes.

Q Who is Mr. Stevens?

A He was a lawyer. I presume he still is. I hope he is.

Q Is he with or was he with the firm of Cadwalader, Wickersham & Taft?

A Yes, he was.

Q Did you not request that he receive copies of your confirmation slips and advices?

A I do not recall.

Q Let me read to you from what is now Plaintiff's Exhibit 28 in evidence, the Dominick & Dominick account card, on the second page of Plaintiff's Exhibit 28. I

will now read into evidence this notation: "4/9/62.

Dup, Monthly Bookkeeping Statements to Mr. Orrie Stevens,
c/o Cadwalader, Wickersham & Taft, 14 Wall Street, New
York 5, New York."

Who is Mr. Gordon Murphy? Is he a lawyer also?

A Yes, he is.

Q Didn't you request that the Bank of New York
send copie of your statements to Mr. Gordon Murphy?

A I don't recall.

Q I would like to show you what has been marked
Defendants' 7 for identification.

THE COURT: Defendants' 7. I am afraid we will
have to identify all of these by prefacing numbers with
whether it is a defendants' or plaintiff's exhibit, since
numbers are being used by both sides. So this is
Defendants' 7 for identification.

MR. BARIST: That is correct, your Honor.

Q Let me show you Defendants' 7 for identification,
Mrs. Van Alen, and ask you if this refreshes your
recollection. I am going to ask you to turn your
attention to what is down here in the lower left-hand
corner and ask if that refreshes your recollection --

A I can scarcely read it.

Q -- that Mr. Murphy was to be sent copies of your

1 statements from Empire Trust Company.

2 A Where did this thing come from? The Empire Trust
3 Company.
4

5 THE COURT: Does that refresh your recollection,
6 Mrs. Van Alen?

7 THE WITNESS: It's very hard to read, your Honor,
8 but it does say triplicate. But I can't read that thing.
9 What is that, Ltr da?

10 Q "Ltr da 3/9/61. Triplicates to: Gordon Murphy,
11 Orrie Stevens," and illegible last word.

12 A And then it says "approx. \$66,000." What is that
13 doing there?

14 THE COURT: No, let us take it one step at a
15 time. The first question is whether or not the reference
16 to Gordon Murphy --

17 THE WITNESS: Yes, his name --

18 THE COURT: -- in any way refreshes your
19 recollection. The answer to that question would be yes or
20 no.

21 THE WITNESS: Yes.

22 THE COURT: The answer is yes.

23 THE WITNESS: But I can't tell whether that means
24 that Ltr da --

25 THE COURT: No, wait for the next question. The

1 [151] Van Alen - cross A-205
2 answer is: It does refresh your recollection?

3 THE WITNESS: It does refresh my recollection.

4 Q Does it refresh your recollection that you
5 directed that Mr. Murphy receive copies of your statements
6 from the Empire Trust Company?

7 A It doesn't refresh my recollection, but the
8 Empire Trust Company says Ltr da Gordon Murphy. And if
9 that means that he was being sent things, I guess he was
10 being sent them. But I have never seen that before.

11 THE COURT: What did it refresh your recollection
12 about with respect to Mr. Murphy?

13 THE WITNESS: Evidently, your Honor, that the
14 Empire Trust Company did send him things.

15 Q Was Mr. Murphy your attorney at various times?

16 A Yes, he was.

17 Q Did he also prepare your income tax records?

18 A Yes.

19 Q Did you give instructions to your banks to send
20 duplicate records to the person preparing your income tax
21 returns?

22 A I don't recall.

23 Q Do you remember giving a deposition in this
24 action? Do you remember coming to my office and my asking
25 you questions and your answering them?

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A Yes.

Q Do you remember that there was a court reporter --

A No, did I go to your office?

Q Do you remember that there was a court reporter there? Withdraw that.

Do you remember coming to 14 Wall Street, the offices of White & Case, to answer questions?

A I thought you always came to our office. But if we went there, we went there. It is so long ago and it is very confusing to me.

Q Do you remember being put under oath in the same way you were put under oath yesterday, taking an oath to tell the truth?

A Oh, I always was when we did these depositions.

Q Oh, you do remember the depositions, then?

A Oh, I couldn't forget.

Q Let me read to you from page 50 of the deposition in this matter:

"Question: Did you give instructions to your banks to send duplicate records to the person preparing your income tax return?

"Answer: Yes.

"Question: At the same time they were to send you a copy, they were to send a copy to the person preparing your

1 income tax returns, is that correct?

2 "Answer: Yes, supposedly.

3 "Question: Those were your instructions?

4 "Answer: Yes."

5 Was that testimony true at the time that you gave it?

6 A Yes. At that point I was more conversant with
7 the details, but so many years have gone by, I forgot that
8 detail.
9

10 Q So now that your recollection is refreshed, you
11 agree that records of your transactions in your accounts
12 at the banks and at Dominick & Dominick were also sent to
13 your attorneys. Correct?

14 MR. SHAFFER: Objection. Asked and answered.

15 THE COURT: I will allow it. Go ahead. The
16 answer, I gather, is yes.

17 MR. BARIST: Does the witness say yes?

18 MR. SHAFFER: Speak up, Mrs. Van Alen.

19 THE WITNESS: Was I supposed to answer then?
20 Because I don't understand the technical terms.

21 MR. SHAFFER: His Honor said he would allow the
22 answer, so answer it.

23 THE WITNESS: Oh. Yes.

24 Q During this period that Mr. deGive was the
25 broker, did you receive a market letter or some type of

[154]

Van Alen - cross

forecast letter from Mr. deGive?

A Not that I recall.

Q Referring to your deposition, page 25:

"Question: Have you ever read any stock market services?

"Answer: Mr. deGive used to send us a letter.

"Question: Mr. deGive used to send you a letter?

"Answer: Yes.

"Question: On a regular basis?

"Answer: I don't know whether it was regular or not, but I have seen forecast letters or whatever it was."

Was that testimony true at the time that you gave it?

A It was true at the very beginning he did send us some things like that, but I hadn't seen him for years. He was very proud of being writer of the forecast letter for Dominick & Dominick. And I thought it gave him great stature.

Q Do you remember what Mr. deGive's market letter was called?

A No.

Q Let me show you what has been marked Defendants' Exhibit 116 for identification. I show you the very top, two words below Dominick & Dominick, Inc., where it says, "Technical Comments."

the word "yes."

MR. SHAFFER: I object, your Honor.

THE COURT: No, I will leave it. Denied.

Q What occupation was listed for Mr. Van Alen on the tax returns which you and Mr. Van Alen signed and filed for the years 1966, 1967, 1968, 1969?

MR. SHAFFER: I object, your Honor; relevance.

MR. BARIST: I will tie it in to the preceding question with the next question.

MR. SHAFFER: I withdraw my objection. See if he can.

Q Do you remember, Mrs. Van Alen?

MR. SHAFFER: You can answer the question. Answer the question.

A I don't remember.

Q Would it refresh your recollection if I said that Mr. Van Alen's and Mrs. Van Alen's tax return for 1966 lists Mr. Van Alen's occupation as investor?

A If it lists it, it lists it.

Q Let me show you what has been marked Defendants' Exhibits 65 for identification, 66 for identification, and 67 for identification, which are the tax returns for the years 1966, 1967, and 1968, and ask you if that refreshes your recollection that Mr. Van Alen's occupation

1
2 on those tax returns was listed as investor.

3 THE COURT: Do you concede it?

4 THE WITNESS: I concede it.

5 THE COURT: No, I am talking about counsel.

6 MR. SHAFFER: Do I concede it? Yes, your
7 Honor, that it so says, yes. I don't know if it refreshes
8 her recollection, but --

9 THE COURT: No, no. Just that it so says.

10 MR. SHAFFER: Yes. I concede that. I am
11 waiting for it to be tied up, Judge.

12 MR. BARIST: Excuse me?

13 MR. SHAFFER: I said to his Honor I was waiting
14 for you to tie it up. I think it is irrelevant, what it
15 says.

16 MR. BARIST: I think it has been tied up.

17 Q Do I understand you to say, then, Mrs. Van Alen,
18 that during this period when Mr. deGive had the power of
19 trading authority over your accounts and a power of
20 discretionary authority over your husband's account at
21 Dominick & Dominick, and at a time when your husband
22 listed himself as a professional investor on his income
23 tax return, you did not consult with your husband with
24 respect to what Mr. deGive was doing in your securities
25 accounts?

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2 A In the first place, I object. He did not
3 list himself as a professional investor. He has no
4 profession. He could be a poet more than anything
5 else. That is what he does most of the time, or writes
6 music. But he is not a professional investor.

7 Q Your counsel has conceded that Mr. Van Alen
8 listed himself as investor under his occupation.

9 A He could be a gentleman investor but
10 unprofessional investor. But he is not a professional
11 investor.

12 Q I see. Let me stand corrected, then. So I
13 understand your testimony: During this period of time
14 when your husband listed himself as an investor on his
15 tax return, you did not consult with him about the way
16 Mr. deGive was handling your account?

17 A Not really, no.

18 Q Let us turn to February 20, 1969, if you can,
19 Mrs. Van Alen. I believe you testified that you had a
20 breakfast meeting with Mr. Van Alen and Mr. deGive at
21 the Westbury Hotel in New York City, is that correct?

22 A Yes.

23 Q And in fact in your diary for that date you
24 have a notation as to the Westbury Hotel.

25 A Correct.

Q Do you have any recollection of anything being said at all at that meeting?

A Yes. We discussed mainly the following meeting that was going to take place right after breakfast down at the U. S. Trust Company.

Q In your deposition in this action at page 205:

"Question: Do you have any recollection of anything being said at all?" This was referring to the meeting on February 20.

"Question: No, nothing definite."

A Since then I have read over the testimony, and you will see that we went to the U. S. Trust right after breakfast.

Q What do you have to refresh your recollection that you went to the U. S. Trust right after breakfast on February 20th?

A My deposition.

Q You said that in your deposition?

A Yes.

MR. SHAFFER: I did not hear the answer.

A Yes.

Q Did you testify to that in your deposition?

A I did.

MR. BARIST: Your Honor --

MR. SHAFFER: I object to any statement, your Honor. He can ask questions.

MR. BARIST: I did not say anything yet.

MR. SHAFFER: Well, he started.

MR. BARIST: I wanted to ask your Honor a question.

MR. SHAFFER: I object to that. Just the witness, Judge.

THE COURT: Well, we don't know what it is.

When you say that you said it in your deposition, are you referring to the deposition that was taken January, was it, of 1972?

MR. BARIST: There were a number of depositions, your Honor.

THE WITNESS: It is in one of those three books of my depositions.

THE COURT: All right.

THE WITNESS: I don't know just which time. We have been over it so many times.

MR. SHAFFER: Would you give that to his Honor, please. Page 192. It will help you out, Mr. Barist. That is where she said it, lines 17 to 20.

Q Can you tell us what Mr. deGive said to you and Mr. Van Alen, and you and Mr. Van Alen said to Mr. deGive

at this meeting on February 20?

A No, I can't.

Q Do you have any recollection, as best you can, as to what was said at that meeting on February 20?

A I have no recollection.

Q Page 206 of your deposition in this action:

"Question: Do you have anything that you recollect as being said, just your best recollection of what was said at that meeting? That is all we are asking for now. I am sure --

"Mr. Kamerman: No, no. I'm sorry. Concentrate on the question. He wants your best recollection and not surmise.

"The Witness:" -- Mrs. Van Alen -- "My best recollection would be that Mr. deGive was as usual giving reasons for why he was doing things or explaining things why it went back. He always had a lot of discussion and patter and things he would explain about the market."

Was that testimony true when you gave it in your deposition on this action?

A It's been true every time we have had a meeting with Mr. deGive. Nothing unusual.

MR. SHAFFER: I did not hear that.

2 THE WITNESS: I said it's nothing unusual.
3 That is the usual line. But I thought you meant any
4 special facts.

5 Q Did you discuss with Mr. deGive on February 20
6 the fact that he had purchased stocks on February 20 and
7 sold those stocks on February 18?

8 A No.

9 Q On your deposition, Mrs. Van Alen, at page 206,
10 in answer to that very same question, you said --

11 MR. SHAFFER: Read the question and the answer,
12 please.

13 Q Line 20:

14 "Question: Did you" -- this is page 206 -- "discuss
15 with Mr. deGive on February 20 the fact that he had
16 purchased stocks on February 12 and sold those stocks on
17 February 18?

18 "Answer: I don't know.

19 "Question: When you say you don't know, you mean
20 you have no recollection?

21 "Answer: I don't recall.

22 "Question: Did you ever have any conversations with
23 Mr. deGive as to why he purchased stocks on February 12
24 and sold them on February 18?

25 "Answer: I don't recall.

1 [199]
2 "Question: Did Mr. deGive ever tell you that he
3 had made a mistake and that he wanted to rectify the
4 mistake as quickly as possible?

5 "Answer: I don't recall."

6 Were those answers given by you on your deposition
7 true?

8 A I just told you I didn't recall.

9 Q But you told Mr. Shaffer, in response to his
10 questioning yesterday, that you had a firm independent
11 recollection that you never discussed these questions
12 on February 20.

13 A All right.

14 Q Is that true or not true, yes or no? Did you so
15 testify in response to Mr. Shaffer's questions yesterday?

16 MR. SHAFFER: Your Honor, would you tell her
17 that she can answer yes or no and give an explanation if
18 she chooses.

19 THE COURT: Yes, that is so.

20 A If I answered that to Mr. Shaffer, that I didn't
21 do it, is because at that date that you are questioning
22 there, I have since realized that I could never have got
23 the sales notices and things from Dominick & Dominick to
24 say that Mr. deGive had either bought or sold, because the
25 lapse of time was too short and I had no knowledge that

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2 he had done anything like that, because there was no
3 time for the mail to bring the things in.

4 Q Excuse me. I thought from previous testimony
5 that you did not read the confirmations and statements
6 when they came in.

7 A I don't. But at that point we were getting a
8 little nervous.

9 Q In February of 1969 you were getting nervous?

10 A There were so many slips coming in, yes. I
11 testified in one of those three books that I was getting
12 nervous.

13 Q And you were getting nervous in February 1969?

14 A Yes.

15 Q Let us go back step by step. You just told me
16 that the reason you could testify to Mr. Shaffer yesterday
17 that you knew you did not have this conversation with Mr.
18 deGive was because you knew you did not get the slips in
19 time. Right?

20 A Yes. If all those slips had come in, I would
21 have noticed.

22 Q But on your deposition you testified you did
23 not recall whether or not you had discussed these
24 subjects with Mr. deGive, correct?

25 A At that point I didn't know that he had bought

and sold all those things at that time.

Q But you would have known if he had told you, correct?

A If he had told me, yes.

Q And you don't recall whether or not Mr. deGive told you orally on February 20 that he had bought and sold and made a mistake?

A Might I point out, I said if he had told me I would recall.

THE COURT: I would, you say?

THE WITNESS: I would recall if he had told me.

Q But on your deposition you said you did not recall. Is that correct?

A You have me so confused now about what is a deposition and what isn't a deposition, I stand by what I said before.

Q On March 6 those confirmation slips, which were getting you nervous, would have come into your address at Avalon; right, Mrs. Van Alen?

A I don't know.

Q Well, the record shows that the purchases were made on February 11 and 12. The record also shows that you told the Bank of New York to send you advices as soon as made. We have stipulated that the slips were sent.

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2 Do you know on March 6 whether or not you received all
3 those slips which you testified made you nervous?

4 A No.

5 Q Do you have any reason to believe that by
6 March 6 you had not received the slips showing the
7 purchases on February 11 and 12?

8 A Yes, I have reason to believe I had not seen
9 them.

10 Q What is that reason?

11 A Because I can't believe I wouldn't have
12 remembered going in and out of the market in ten or
13 eleven days.

14 Q You had a meeting with Mr. deGive on March 6,
15 Mrs. Van Alen?

16 A Yes.

17 Q Do you remember who called for the meeting on
18 March 6?

19 A No.

20 Q Do you remember who called for the meeting on
21 February 20?

22 A Mr. Van Alen.

23 Q Question on your deposition:

24 "Question: Do you remember who called for the
25 meeting on February 20?"

MR. SHAFFER: What page is that, Mr. Barist?

MR. BARIST: Page 208.

Q "Answer: No."

A Since we went to the --

Q I have not asked the question, Mrs. Van Alen.

A Oh, all right.

Q Going to the meeting of March 6, do you have a recollection of anyone saying anything at the meeting on March 6?

A Nothing unusual.

Q No recollection whatsoever.

A No.

Q Did you discuss with Mr. deGive your account?

A There must have been some general discussion.

Q But you don't recall what the discussion was, is that correct?

A That's correct.

Q After March 6, in April of 1969 do you have any recollection of any meetings or communications with Mr. deGive in April?

A No, I don't recall.

Q Do you have any recollections of any meetings or communications with Mr. deGive in May of 1969?

A I don't recall.

1 [204]
2 Q What about June? Do you have any recollections
3 of any meetings or communications --

4 A No.

5 Q -- of any kind with Mr. deGive in June of 1969?

6 A No, I don't recall.

7 Q Do you recall if by June of 1969 you were aware
8 that Mr. deGive in your words had gone in and out of the
9 market?

10 A I can't recall. I don't know if it was in
11 June or not.

12 Q You do have a diary entry, though, for June 6,
13 Friday, June 6, with deGive's name circled around it?

14 A Yes, I recall that. I recall what it said,
15 "trying to find deGive."

16 Q "Trying to reach deGive," actually.

17 A To reach, to reach deGive.

18 Q Did you talk to deGive?

19 A No.

20 Q Get to reach deGive in June?

21 A No, I didn't.

22 Q Was that because it was impossible to find him
23 during the summer? I think that is what you testified to
24 yesterday, isn't it?

25 A It was very hard to find him at that point.

1 [205]
2 Q In the summer of 1969?

3 A At that point, yes.

4 MR. SHAFFER: What date was that, June what?

5 THE COURT: 6th.

6 MR. SHAFFER: Well, that would not be summer
7 yet, Judge.

8 THE COURT: What?

9 MR. SHAFFER: It would not be summer yet, Judge.

10 Q As a matter of fact, your diary, according to
11 what you have read in the record, showed that you were
12 trying to catch deGive at around June 24, 1969?

13 A I guess I was still trying to reach him.

14 Q Do you remember being able to communicate with
15 him on or around June 24?

16 A No. No, I don't.

17 Q When you say no, you don't, are you saying,
18 "No, I don't recall whether I did," or "No, I recall I
19 didn't reach him"?

20 A I recall I didn't reach him.

21 Q In fact you were out of the country for the
22 week, first week in July of 1969, were you, Mrs. Van Alen?

23 A I don't recall.

24 MR. BARIST: Mr. Shaffer, will you concede she
25 was out of the country from July 6 to July 11, 1969,

1 based on your letter to me of September 18, 1973, at
2 page 248 of the deposition of Mr. Van Alen?

3 MR. SHAFFER: We accept his representation and
4 concede it, Judge.

5 Q How about June 30? Did you see Mr. deGive on
6 June 30?

7 A No, I did not.

8 Q Your diary has the word "deGive" in it on
9 June 30, does it not?

10 A I don't know. I didn't see him.

11 Q It says, "J to see deGive and U. S. Trust,
12 conference re estates and trusts."

13 A That is Mr. Van Alen.

14 Q It does not refer to your account?

15 A No. He was Mr. Van Alen's advisor in his trust
16 funds.

17 Q So Mr. deGive saw Mr. Van Alen on June 30, 1969,
18 is that correct?

19 A I don't know. It says so in the book, but I
20 wasn't there.

21 Q The book says that Mr. Van Alen had the meeting
22 on June 30, right? The diary book?

23 MR. SHAFFER: The book speaks for itself, Judge.
24 It does not say that. It says the entry says what it
25

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2 says.

3 Q Let me refresh your recollection a little bit
4 more. The diary entry that you wrote down for June 30,
5 1969, is: "J to see deGive and U. S. Trust, conference
6 re estates and trusts. Taxi to \$4, from \$3.75."

7 So does that refresh your recollection that the
8 entry for June 30 was recording the expenditure of
9 dollars for deduction for your income tax purposes in
10 regard to a business conference Mr. Van Alen had with
11 Mr. deGive?

12 A That's correct.

13 Q So we can now state, with your recollection
14 refreshed, that Mr. Van Alen did meet with Mr. deGive
15 on June 30?

16 THE COURT: Did?

17 MR. BARIST: Did.

18 A If I had the taxis there, I must have asked Mr.
19 Van Alen for them.

20 Q Does that refresh your recollection also that
21 Mr. deGive was not hiding anywhere in June of 1969?

22 A I never said he was hiding anywhere.

23 Q It was not that hard to get ahold of him, was
24 it, in June of 1969?

25 A It was very hard for me to reach him.

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Q But Mr. Van Alen did?

A I don't know about Mr. Van Alen.

Q Mr. Van Alen, you testified, went to the meeting with Mr. deGive.

A That has nothing to do with me.

Q Were you, as of June 30, 1969, aware of the purchases in February and the sales in February 1969?

A Not to the greatest extent that they were, but I knew that there had been a great deal of activity.

Q Were you aware that as of June 30 there had been purchases on or about April 30 and sales on or about May 27?

A No.

Q You were not aware as of that time?

A No. It was too quick.

Q The thirty days is too quick to become aware; is that your testimony?

A Well, I think I was away part of the time too.

Q But you did not go with Mr. Van Alen, with Mr. deGive, to the U. S. Trust Company on June 30, 1969, did you?

A No, I did not go with Mr. Van Alen.

Q Did you talk to Mr. deGive at all in the summer of 1969? Summer: June 21, July, August.

1 [209] Van Alen - cross A-226
2 A I don't recall ever speaking to him that
3 summer.

4 Q Excuse me, I could not hear that.

5 A I do not recall speaking to him that summer.

6 Q Didn't you tell Mr. Shaffer yesterday that there
7 might have been a phone call in July of 1969?

8 A I don't know. I don't recall it. There might
9 have been, but I don't recall it.

10 Q You have spent the summer basically at your
11 home at Avalon, Newport, Rhode Island; right?

12 A That's correct. And Mr. deGive spent his time
13 in his home in Southampton.

14 Q Do you remember becoming nervous about the
15 account in the summer of 1969?

16 A I was apprehensive.

17 Q Nervous? Are they synonyms?

18 A Not especially.

19 Q On your deposition you described it as being
20 nervous.

21 MR. SHAFFER: What page is that, Mr. Barist?

22 MR. BARIST: Try 62 for an instance.

23 MR. SHAFFER: All right. Let me participate
24 with you.

25 Q What did you mean by nervous?

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A I meant I was apprehensive.

Q What does apprehensive mean?

A I guess it means I was nervous.

Q How about scared? Is that a synonym?

A No, that is stronger.

Q That is stronger. It is less than scared.
Nervous. Wanting to know what was going on, right?

A Yes. That is a good description.

Q Did you ask Miss Watson, your secretary, to run
an adding machine tape on all the purchases and sales that
had occurred in 1969?

MR. SHAFFER: As of when?

Q Some time in the summer of 1969.

A I don't remember.

Q Page 62. Let me go back a second, because I
need to go back to 61.

"Question: Did you have any course or pattern as to
what she would do with the papers from Dominick & Dominick?

"Answer: Put them in a box.

"Question: She would not read them?

"Answer: I don't think she'd understand them.

"Question: Did you ever tell her to read them?

"Answer: Sometimes.

"Question: What times?

1 [211]
2 "Answer: Well, when there was so much activity
3 in the account I couldn't believe it so I asked her to
4 run a tape on the different purchases.

5 "Question: When you say run a tape you mean an
6 adding machine tape?

7 "Answer: Yes.

8 "Question: When did you ask her to do that?

9 "Answer: When I got so nervous about the account.

10 "Question: When was that?

11 "Answer: '69-70.

12 "Question: Do you remember when in '69?

13 "Answer: Quite -- the summer or something."

14 Does that refresh your recollection?

15 A Yes. The summer or something would be my
16 answer.

17 Q And in fact wasn't it August or something,
18 rather than simply the summer? Can we narrow it down a
19 little bit further than this, the summer, to around
20 August?

21 A I find it difficult to narrow it down any more.

22 Q Page 131, Mr. Shaffer.

23 MR. SHAFFER: Thank you.

24 Q "Question: Do you remember when in 1969 you
25 asked Miss Watson to do this?

[212]

Van Alen - cross

"Answer: August or something."

Does that refresh your recollection?

A No, not any more. Not any further.

Q Was the statement true when you gave it?

A Yes.

Q In the testimony?

A Of course it was true, to my best belief.

MR. SHAFFER: I cannot hear you. You cannot
mumble.

A I said, he asked if it was true when I gave it,
and I said yes, to my best belief.

Q In August of 1969 did you contact Mr. deGive to
ask him about the manner in which he was handling your
account?

A I don't think so.

Q You say you don't think so or you don't
remember?

A I don't remember. I don't recall.

Q Is it not fair to say, Mrs. Van Alen, that you
don't remember, have an independent recollection, of any
single meeting with Mr. deGive in 1969 at all?

A Oh, no. We met -- would you like to know what
I remember?

Q Excuse me?

[213]

Van Alen - cross

A You asked me -- would you mind repeating your question.

(Question read)

Q I go to your deposition at page 134:

"Question: Do you remember having any meetings at all with Mr. deGive in 1969?

"Answer: I don't remember."

Was that testimony true at the time that you gave it?

A Yes. It was true at the time.

Q Thank you.

A I don't know what you are referring to, because --

MR. SHAFFER: Just answer the question.

Q Let us put this in context. Some time in August 1969 or the summer of 1969, after Miss Watson has run the tape, you have described yourself as being nervous or apprehensive, and at this time I want to know: Did you communicate, talk to anybody, in the summer of 1969, about your nervousness or apprehension with respect to the trades Mr. deGive had made in your account?

A I never discussed my personal business.

Q Do you recall talking to anyone about it?

A No, I don't.

Q Did you talk to Mr. deGive about it?

A No, I don't recall.

[214]

Van Alen - cross

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Q Did you try to reach him?

A I did try to reach him.

Q Was he hard to reach because he was away for the summer?

A I don't know where he was.

Q Let me read to you this testimony, and before I do, you remember, Mrs. Van Alen, that you have brought a lawsuit against the First National City Bank and Paul deGive, and there is another lawsuit besides this one pending.

A Is that still on the --

MR. SHAFFER: You cannot ask me questions, Mrs. Van Alen, and I am glad because I don't know the answers.

A I don't recall.

Q But you remember giving a deposition in the action which you brought against the First National City Bank and Paul deGive?

A I have given so many depositions, you would have to refresh my memory.

Q All right, I will. I refer to page 179 of Mrs. Van Alen's deposition in the First National City Bank case.

MR. SHAFFER: Can I look over your shoulder?

MR. BARIST: All right.

MR. SHAFFER: Because I don't have that one, Judge. I had trouble bringing these records.

Q Candace C. Van Alen v. First National City Bank and Paul deGive. It is also pending in this courthouse. I am reading:

"Question: Did you talk to Mr. deGive about it?

"Answer: I tried to reach him, but he was very hard to reach on the telephone when he was away for the summer."

Did you give that testimony in that action and was it true at the time you gave it?

A Any testimony I gave was true in my belief.

Q Do you remember receiving a letter from Mr. deGive in August of 1969?

A Not now, no.

MR. BARIST: Would you show Mrs. Van Alen, Mr. Bilus, please, Defendants' Exhibit 44 for identification.

Q Mrs. Van Alen, can you identify the handwriting in the --

A If you will give me a chance to read it.

Q I am sorry.

THE COURT: Looking at what number?

MR. BARIST: Looking at Defendants' Exhibit 44.

MR. SHAFFER: 44.

[216]

Van Alen - cross

MR. BARIST: For identification.

A Now, what was your question?

Q Are you the "Candy" referred to in that letter?

A You know I am.

Q And that is your handwriting in the left-hand margin?

A It is my handwriting.

MR. BARIST: I offer Defendants' Exhibit 44 for identification in evidence.

MR. SHAFFER: Your Honor, we do not object to that, and I have shown the original to the witness because it is her handwriting that is on the original.

THE COURT: Received.

(Defendants' Exhibit 44 received in evidence.)

MR. BARIST: Let me read it into the record if I could, your Honor:

"Dear Candy, I am enclosing a list of your assets at the Bank of New York and you will note from the recapitulation which I am enclosing how your account stands at this time. Your account here at Dominick & Dominick naturally has been in cash for some time which is invested in treasury bills yielding over 7 percent. Fortunately, as a result of the sales in May and June, we have avoided the big decline in the stock market and

XXX

and your assets still remain at a high level.

"For goodness sake, if you have any thoughts which you would like to talk to me about, you can call me, as I am in the office Monday, Tuesday, Wednesday and Thursday each week. My best to Jimmy. Very truly yours. Paul deGive."

MR. SHAFFER: Would you please read her handwritten remarks at this time.

MR. BARIST: Mr. Shaffer, I assure you we will get to them, but I would like to ask some questions about the exhibit.

MR. SHAFFER: All right.

THE COURT: I think we will take a ten-minute recess.

(Recess)

THE COURT: Counsel, please proceed.

Q Mrs. Van Alen, you were at Avalon, Newport, Rhode Island, before the summer of 1969, including August?

A Yes, I was.

Q Did you read this letter after you received this letter some time after August 15?

THE COURT: This letter being?

MR. BARIST: Excuse me, your Honor.

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THE COURT: 44?

MR. BARIST: Defendants' 44. I did offer that.

THE COURT: It is received.

MR. BARIST: It is? Thank you, your Honor.
I know we had broken just at that point.

Q You did read that letter, Defendants' 44.

A Yes. I have read it.

Q You read it when you received it in August of
1969, is that correct?

A I am not sure I read it in August, no.

Q Excuse me?

A I am not sure I read it in August, no.

Q How long in your experience does it normally
take for letters to get from New York to Newport, Rhode
Island?

MR. SHAFFER: Your Honor, I don't know that that
is probative. I think what we are getting into is after
it was received. That is no indication it was read at
that time.

THE COURT: That is true. On the other hand,
the witness may have some idea --

MR. SHAFFER: All right.

THE COURT: -- how long at that time it normally
appeared it took the letters to get from one point to

[219]

Van Alen - cross

another.

THE WITNESS: Well, your Honor, I don't know, but it was quicker than it is now. And I often don't read my mail for quite some time, especially in August.

Q Weren't you nervous about your securities accounts in August of 1969? You have previously so testified.

A Well, that doesn't mean I am going to read every letter.

Q The fact that you were nervous about your accounts in August of 1969 would not mean that you would read a letter from your broker about your accounts in August of 1969; you would just let the letter sit there.

A I probably wouldn't even look at the mail for a week or so, no matter who it was from, unless Miss Watson brought it to my attention. August is a very busy, busy time for Mr. Van Alen.

Q Isn't it a vacation time?

A No, it is not. My husband rarely takes a vacation. August is the time that he has the National Tennis Hall of Fame, very active every minute.

Q What is your best recollection as to when you read Defendants' 44 in evidence?

A I don't remember reading it.

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Q Do you remember if you ever read it at all?

A Oh, I know I read it, at some point, because I made some -- some notes in the margin.

Q Do you have a recollection as to whether you read it before the end of August?

A No, I have no recollection.

Q Do you have a recollection of whether you read it before the end of September?

MR. SHAFFER: Your Honor, she has already testified she does not have a recollection. We don't have to go through the calendar by month.

THE COURT: That is correct.

MR. BARIST: I think, your Honor, the --

MR. SHAFFER: I withdraw my objection, if it will help you. Go ahead.

MR. BARIST: Could I have that question, your Honor?

THE COURT: Did you read it in September?

THE WITNESS: I don't recall.

Q Did you read it before you met with deGive in October of 1969?

A I don't recall.

Q Do you recall when you put the marginal notations?

A I can place that somewhat.

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Q Excuse me?

A I can place it somewhat.

Q When do you recall placing the marginal notations on Defendants' 44 in evidence?

A It was probably in 1970.

Q Do you remember testifying a while before when you were trying to get Mr. deGive in December 1969 but he was hard to get?

A I do.

Q Do you recall Defendants' 44, the letter from Mr. deGive, stating that Mr. deGive was in his office Monday, Tuesday, Wednesday and Thursday?

A I see that.

Q Do you recall placing a telephone call to his office on a Monday, Tuesday, Wednesday or Thursday in August of 1969?

A No, I don't recall what day, or just when. Maybe he was out at lunch whenever I called.

Q Do you recall placing a telephone call to his office in August of 1969?

A I don't know whether it is August or July, but I recall trying to reach him.

Q My question is: In August do you recall trying to reach him at his office?

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A I didn't hear your question.

Q Do you recall trying to reach him in his office in August of 1969?

A I don't recall.

Q Do you recall what you were referring to when you wrote, "Why did you buy in the first place last April or May?" on the margin of Defendants' Exhibit 44 in evidence?

A Do I recall now why I did it? Is that your question?

MR. BARIST: Could you read back my question?

(Question read)

A Yes. I was referring -- yes, I do remember.

Q Page 215 of Mrs. Van Alen's deposition:

"Question: Could you tell us what you were referring to when you wrote, 'Why did you buy in the first place last April or May?'

"Answer: I don't recall."

A My memory has been refreshed by all the discussion of the ins and outs.

Q Continuing on page 215 of Mrs. Van Alen's deposition:

"Question: Were you referring to the purchases of stock?

"Answer: I don't recall."

1. [223]
2 Do you have any recollection as to what you meant
3 by the other comment, second comment on Defendants' 44
4 in evidence, the reference to buying in October and
5 November of 1968?

6 A Because of -- yes.

7 Q Pages 215-216 of Mrs. Van Alen's deposition:

8 "Question: Do you have any recollection as to what
9 you meant by the second comment on Defendants' Exhibit 44
10 in evidence, the reference to buying in October-November
11 '68?

12 "Answer: I don't recollect."

13 A My memory has been refreshed.

14 Q Do you recall any meetings or telephone
15 conversations with Mr. deGive in September of 1969?

16 A No.

17 Q Is that "No, I don't recall any"?

18 A I don't recall.

19 Q You have no recollection one way or the other
20 whether there were or there were not, is that fair?

21 A At this moment I have no recollection of it.

22 Q A moment ago, a few moments ago in your
23 testimony, I believe you told me that if the February
24 purchases and sales that occurred had been discussed by you
25 and Mr. deGive you would have remembered them because of

Van Alen - cross

the one-week separation between the purchase and the sales;
correct?

A Yes.

Q And if someone had a conversation with you
about the stock market where he said, "I have an
infallible system to buy stocks," you would remember
that conversation also, would you not?

MR. SHAFFER: Improper cross, Judge. I object.

THE COURT: Change it to "Would you."

THE WITNESS: Would you like to make the state-
ment again?

THE COURT: Reframe it.

Q And if someone made a statement to you that he
had an infallible system by which to purchase stocks,
would you also remember that conversation?

A Yes. deGive, I remember that --

Q I think you answered the question, Mrs. Van Alen,
"Yes."

MR. SHAFFER: Your Honor, I think she can also
add an explanation.

THE COURT: No, yes or no is sufficient on that
question.

MR. SHAFFER: All right.

THE COURT: Next question.

Q Referring to Mrs. Van Alen's deposition,
page 222:

"Question: Do you remember if in October of 1969
Mr. deGive talked to you and your husband about the
purchasing of securities in your respective accounts?

"Answer: I don't recall."

You do recall that your diary entry for October 7,
1969, has some reference to Mr. deGive?

A No, I don't recall it. You will have to
refresh my memory.

MR. BARIST: Can we have the diary of 1969?
If you can show me where in the deposition, I will be
happy to take the reading of it.

Do you have the actual entry?

MR. KAMERMAN: Is there an entry?

MR. BARIST: According to my notes, there are.

MR. KAMERMAN: Where?

MR. BARIST: That is one of the reasons I wanted
to see that diary, Mr. Kamerman.

Excuse me, on page 42 of the deposition you
gave in the action you commenced against the First National
City Bank. It says, "Question: Will you quote what the
entry is there?", referring to October 7.

"Answer: Appointment at 907 Fifth with deGive."

1 [226] Van Alen - cross A-243
2 MR. KAMERMAN: Could you just give us the
3 content of that?

4 MR. BARIST: I am telling you what is in her
5 deposition, Mrs. Van Alen's deposition, in the First
6 National City Bank case, Mr. Kamerman, page 42.

7 I will go back, I will read it to Mrs. Van Alen.

8 Q "Question: Let us go back to the beginning of
9 October. Would you start with the 1st and tell me if
10 there is any reference to any discussions and any
11 reference to Mr. deGive in the Bank of New York beginning
12 with the 1st of October?

13 "Answer: Yes, on Tuesday, the 7th of October.

14 "Question: Will you quote what the entry is there.

15 "Answer: Appointment at 907 Fifth with deGive."

16 MR. SHAFFER: Your Honor, I have looked at that
17 diary and it does so state, and all the other entries of
18 that date are unrelated.

19 Q Do you recall what took place at that time?

20 A No, I don't.

21 Q Do you recall whether there actually was --

22 MR. SHAFFER: Judge, I will even do one better.
23 I would like to do it like they would on the Jencks, to
24 see if what the Government voluntarily gives is
25 sufficient. So for an in camera inspection and not to

1
2 be seen by my brother counsel, I pass to the Court on
3 Tuesday, October 7, the diary with the entries, so the
4 Court can satisfy itself as to the quality of our
5 representation, as least as to that.

6 THE COURT: No, I have made my ruling on that
7 question.

8 MR. SHAFFER: All right, your Honor. Thank you.
9 Anything else you want on the diary?

10 MR. BARIST: No.

11 Q Continuing on page 42 of your deposition in the
12 First National City Bank case:

13 "Question: Do you recall what took place at that
14 time?

15 "Answer: I am sure he was talking stocks. That may
16 have been the time when he said he wanted to borrow."

17 Was that testimony true at the time you gave it?

18 A I repeat, any testimony I gave when I gave it,
19 in my opinion it was true.

20 Q Do you recall whether the meeting on October 7
21 at Fifth Avenue took place?

22 A I don't recall it. If it was in my book it must
23 have taken place.

24 Q Page 43, First National City Bank case. That
25 question follows immediately from the last one I read.

1 [228] Van Alen - cross
2 "Question: Do you recall whether the meeting on
3 October 7 at Fifth Avenue took place?

4 "Answer: No. No, I can't even recall if it took
5 place."

6 Let us go to October 16, with the permission of your
7 counsel.

8 Your diary entry for October 16 reads as follows --

9 MR. BARIST: Counsel, will you correct me if I
10 read it wrong.

11 Q "Thursday. October 16. Mets win. New York
12 Trust Derek Van Dusen. Taxi. 3.50, 5.50. Meetings at
13 lunch. PTC too."

14 MR. SHAFFER: T-o-o.

15 MR. BARIST: T-o-o, correct.

16 MR. SHAFFER: You read it right.

17 MR. BARIST: Thank you.

18 Q You had a meeting with Mr. deGive and Mr. Van Alen
19 at the U. S. Trust Company on the morning of October 16?

20 A Yes.

21 Q ~~You accompanied~~ Mr. Van Alen to that meeting?

22 A I sat in on that one.

23 Q Didn't you testify earlier today that at the
24 meeting on -- could it be the February 20 or March 6 --
25 that your really getting together for breakfast was the

1
2 follow-up meeting at the U. S. Trust Company?

3 A Follow-up to what?

4 Q After the breakfast meeting.

5 A Yes.

6 Q Then on March 6 or February 20.

7 A February 20.

8 Q And did you go along to that meeting on
9 February 20?

10 A Yes.

11 Q We then have identified two meetings at the
12 U. S. Trust Company that you attended with Mr. Van Alen
13 and Mr. deGive, February 20 and October 16. Do those
14 facts refresh your recollection on June 30 when Mr.
15 Van Alen went to the U. S. Trust Company you also
16 accompanied Mr. Van Alen and Mr. deGive?

17 A I told you I didn't go.

18 Q How long did the meeting with the U. S. Trust
19 Company on October 16 last?

20 A I think it lasted through lunch.

21 Q Through lunch?

22 A Yes.

23 Q How much past lunch did it last?

24 A I don't have complete total recall of things
25 like that.

[230]

Van Alen - cross

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Q Well, you do remember --

A I don't know.

Q You do remember going from the U. S. Trust Company, which is located down in the financial district, is it?

A Don't you know?

Q I am asking you. Do you know? Where is the U. S. Trust Company located?

A In the financial district.

Q Lower Manhattan?

MR. SHAFFER: Speak. He said, "Lower Manhattan?"

A Yes.

Q You went from there to Dominick's office, which was located in Wall Street?

A I don't know the address.

Q It was located in the same general vicinity?

A That's correct.

Q Do you recollect if you and Mr. deGive and Mr. Van Alen discussed anything in regard to the stock market on October 16?

A I don't recollect any express conversations.

Q Page 218 of Mrs. Van Alen's deposition.

MR. SHAFFER: In which case?

THE COURT: Before you do, read back the last

answer.

(Record read)

THE COURT: Page?

MR. BARIST: 218. Deposition in this action,
your Honor.

Q "Question: Do you recollect if you and Mr.
deGive and Mr. Van Alen discussed anything in regard to
the stock market on October 16?

"Answer: I don't recollect, except Mr. deGive was
talking about his -- how he had -- almost had this all
set up and it was coming along very well. He was talking
confidently, as he usually did."

A I thought your question --

MR. SHAFFER: Nobody asked you a question.

Q With respect to the loan that you wound up
taking out from the First National City Bank later on in
October, didn't the discussions with respect to those
loans between you and -- discussion for that loan, for
the loan you got from the First National City, didn't
the discussion for that loan between you and Mr. deGive
commence back in September of 1969?

A I don't recall.

Q Page 82, deposition in this case. This was in
October of 1969.

[232]

Van Alen - cross

"Answer: He may have started it in September."

A He may have.

Q May have. But certainly you had a number of conversations with Mr. deGive about this loan prior to your meeting with him on October 16?

A No, I wouldn't say "certainly." The meeting was set up to go to the U. S. Trust Company, and at that point he probably said something about the loans, because he knew we were going to Europe. But there had been -- must have been some prior arrangement to get him together to go down to the meeting of the U. S. Trust Company with all the people who had to do with my mother-in-law's will.

Q You definitely recollect the meeting on October 16, right?

A I do indeed.

Q You don't recollect whether there was a meeting on October 7, right? You don't recollect whether there was or there was not?

A I have no recollection.

Q Your conversations with Mr. deGive about the loan, did they occur in person or by telephone?

A In person when he showed me the black box at Dominick & Dominick that day, in October, and I suppose before, in -- I don't recall. But certainly then.

1 [233] Van Alen - cross A-250
2 Q You mentioned the black box. Is that what we
3 agreed earlier this morning was a desk with paper in it?

4 A I don't think it was a desk. It was a box
5 with papers in it.

6 Q A box with paper in it.

7 A Charts.

8 Q A filing box with paper in it?

9 A Large charts.

10 Q With charts in it.

11 MR. SHAFFER: Your Honor, I just want -- excuse
12 me.

13 Q With respect to that loan, I believe you
14 testified in response to Mr. Shaffer's questioning
15 yesterday that he called Mr. Muecke at the Bank of New
16 York with respect to that loan?

17 A That's correct, Mr. Barist.

18 Q Did he turn you down, as you said, flat?

19 A Absolutely.

20 Q In the same conversation in which you said,
21 "I want a loan," he said, "No way"?

22 A Absolutely.

23 Q And you have a vivid recollection of that?

24 A I do.

25 MR. BARIST: Deposition of Mrs. Van Alen in

the First National City Bank.

MR. SHAFFER: Page, please?

MR. BARIST: I am trying to find it.

Page 25.

Q "Question: You said he flatly refused, he being Muecke. Did he flatly refuse in that same telephone call -- telephone conversation?

"Answer: I can't recall."

A Well, maybe he called back and another one but that was very quick for a bank. Anyway he let me know immediately that there was no hope.

Q But a moment ago you did tell us that you had a vivid recollection of his saying, "No way," in the same conversation in which you asked for the loan?

A It was in my recollection he said no.

Q By the way, you have told us a number of times that Mr. deGive knew you were going to Europe. Did you tell him you were going to Europe?

MR. SHAFFER: When, Judge?

Q In October of 1969?

A Why, sure. That is why he wanted the loan.

MR. BARIST: Page 27.

MR. SHAFFER: Which case?

MR. BARIST: FNCB, the First National City Bank case

MR. SHAFFER: On what page?

MR. BARIST: Page 27.

Q "Question: You said you were discussing that with Mr. deGive prior to obtaining the loan?

"Answer: He knew we were going to Europe.

"Question: You discussed it with him presumably?

"Answer: No, I had no discussion. We were just going to Europe."

A Well, I didn't discuss my trip with Mr. deGive, of course not. I just said we were going to Europe.

Q Had you had a long-standing checking account at the First National City Bank as of October 1969?

A Yes, I had.

Q Did you have any other relationship to the First National City Bank?

A No.

Q Then Mr. Vanderlip, whom you were originally married to, was that man also chairman of the board of the First National City Bank?

A His father was chairman in 1920.

MR. SHAFFER: So then would you answer the question.

THE WITNESS: Yes.

MR. SHAFFER: No.

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A No, he wasn't.

Q I will accept your counsel's statement.

Did you ever meet with Mr. Robert Hoguet?

MR. SHAFFER: That is H-o-g-u-e-t.

A Did I ever meet with him?

Q Yes.

A I have met him.

Q Did you ever meet with him with respect to the loan you got from First National City Bank?

A No.

Q The contact, person who called you from First National City Bank, was a Mr. McLean, Mr. Stafford McLean.

A Yes.

Q I think you testified yesterday you had a meeting with Stafford McLean and a Mr. Thomas at the Colony Club, your club?

A Yes. He pronounces his name McLean.

Q McLean, excuse me.

MR. SHAFFER: She does not care.

A I don't care, but he might care.

Q At this meeting at the Colony Club -- withdraw that.

Did you have another meeting with Mr. McLean after the meeting at the Colony Club --

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A Yes.

Q -- before you left for Europe?

A Yes.

Q And the meeting was a day or so later?

A Yes.

Q And the meeting was at the Racquet Club?

A Yes.

Q It was at the Racquet Club a day or so after your initial meeting with McLean at the Colony Club that you signed the papers which gave you the loan?

A He brought some papers over.

Q Over to the Racquet Club, right?

A Which is across the street.

Q Over to the Racquet Club?

A Yes.

Q So that we have the sequence down: McLean called you, you had a meeting at the Colony Club, a day or so went by, and then you signed the papers at the Racquet Club a day or so after the Colony Club luncheon.

A I think we may have signed some papers at the Colony Club, but I don't recall.

Q But you do recall signing the papers at the Racquet Club?

A Yes.

1 [238] Van Alen - cross A-255
2 Q Thank you. The purpose of the loan from the
3 Bank of New York in October 1969 was to buy securities;
4 right?

5 A Correct.

6 Q And Mr. deGive told you this, right?

7 A He asked for it. He didn't tell me. He asked --
8 MR. BARIST: I move to strike that.

9 MR. SHAFFER: Your Honor, it is a way of
10 answering.

11 THE COURT: I will leave it.

12 MR. SHAFFER: Thank you, Judge.

13 Q I ask you this, Mrs. Van Alen: You have
14 previously testified to the fact that in August of 1969
15 you had Miss Watson do a tape of the activity in your
16 account. You previously have testified that you agreed to
17 borrow \$200,000 to buy additional securities in mid-
18 October 1969, at the end of 1969.

19 A Yes.

20 Q And that you borrowed this money because all
21 the other money you had had been invested in securities
22 at this time?

23 MR. SHAFFER: Your Honor, I object to the form
24 of the question, only because, and the rambling statement
25 of it, as an assertion that it is in the record that Mrs.

1
2 Van Alen had testified that she had Miss Watson run a
3 tape. I don't think it is clear that the record does
4 establish that the running of the tape was before or
5 after October 16.

6 MR. BARIST: I think the record was very clear
7 that Miss Watson ran a tape in August of 1969, your
8 Honor.

9 THE COURT: Just a moment.

10 MR. BARIST: If it is not, I will go back and
11 clear it up.

12 THE COURT: Just a moment.

13 MR. SHAFFER: Your Honor, I might be able to save
14 a little time.

15 May I say something on the record?

16 THE COURT: Yes.

17 MR. SHAFFER: Until he establishes at whose
18 direction the tape was run, I don't think his premise is
19 valid, irrespective of sequence.

20 MR. BARIST: I think it was established also
21 that it was done at Mrs. --

22 THE COURT: One moment, please.

23 MR. BARIST: If there is any question --

24 MR. SHAFFER: Judge, I am scared you will find
25 it. I will withdraw the objection.

MR. BARIST: No, I am going to go back and do it again, just to make certain that we don't have any question about it, if your Honor will let me.

THE COURT: I have it here somewhere, but I don't find it quickly.

Q Let us go back. There came a time when you asked Miss Watson to run a tape on the different purchases, an adding machine tape on the different purchases, Mrs. Van Alen.

A I am not sure. I don't recall.

Q I read from your deposition in this case, page 62 -- I have read this one before, I will read it again, 61, 62:

"Question: Did you have any course of conduct or pattern with Miss Watson" --

THE COURT: I find it now. Yes, pages 61-62.

MR. BARIST: Yes, sir.

THE COURT: Asked, according to that deposition, Miss Watson to run a tape on the accounts in the summer 1969.

MR. BARIST: Thank you, your Honor.

I kind of forgot my question. I am glad we caught it, your Honor. I hate to have thought I missed it.

MR. SHAFFER: Your Honor, you see, this is the

problem.

MR. BARIST: The problem with Mr. Shaffer -- I have not even asked a question yet.

MR. SHAFFER: I understand, but we are on something. On page 62, your Honor, we have the following questions and answers:

"Question: When did you ask her to do that?"

"Answer: When I got so nervous about the account.

"Question: When was that?"

"Answer: In '69-70.

"Question: Do you remember when in 1969?"

"Answer: Quite -- the summer or something."

THE COURT: Why don't you save that for your redirect?

MR. SHAFFER: All right.

THE COURT: Go ahead, counsel.

MR. BARIST: With your Honor's permission --

MR. SHAFFER: We got into it through his recital of a hypothesis that I objected to, because I did not think it was in the record.

THE COURT: Let us start over, with that point.

MR. BARIST: No, if I could, your Honor. Page 131 of Mrs. Van Alen's deposition in this case.

1 [242]
2 THE COURT: She said of 1969.

3 MR. BARIST: August of 1969.

4 THE COURT: All right.

5 MR. BARIST: And I have stopped this, because I
6 thought it pretty well established, but I think there is
7 at least one other reference to it.

8 THE COURT: All right. Let us go ahead.

9 MR. SHAFFER: Judge, the record says:

10 "Question: Do you remember when in 1969 you
11 asked Miss Watson to do that?

12 "Answer: August or something."

13 THE COURT: All right. Put your question,
14 counselor.

15 MR. BARIST: The question I was trying to pose:

16 Q You testified that you felt nervous in the
17 summer of 1969, nervous or apprehensive. You testified
18 that Miss Watson ran the tape in the summer or something,
19 or August or something, at your direction, in 1969. You
20 testified that in October, late October 1969, you agreed
21 to borrow \$200,000 to buy stocks. And you testified
22 yesterday, in response to Mr. Shaffer's question, that
23 the reason you borrowed the money from the Citibank was
24 because all your other money had been used to purchase
25 stocks.

[243]

Van Alen - cross

A-260

My question is: Did anything happen between the summer of 1969 and the time when Mr. deGive first suggested to you, according to your testimony, that you borrow \$200,000 to purchase securities, that alleviated the nervousness or apprehensiveness you felt about his purchasing and selling securities?

A I don't recall.

Q Mrs. Van Alen's testimony in the First National City Bank case at page 179:

"Question: Well, did anything happen between the summer of 1969 and the time when Mr. deGive first suggested to you that you borrow \$200,000 to purchase securities that alleviated the nervousness you felt about his purchasing and selling securities?

"Answer: Just Mr. deGive speaking to me about the loan. He was my advisor. I never had any other. And he seemed to think everything was going to be all right."

A I will go along with that.

THE COURT: Page?

MR. BARIST: 179.

A I will accept that answer.

Q Did you discuss with him the risks involved in taking that loan?

A Of course I did.

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Q You knew that there were risks involved?

MR. SHAFFER: In what?

Q Taking a loan to buy securities.

A Yes, you have to pay it back.

Q Do you recollect receiving any communications from Mr. deGivie in November of 1969?

A No, I don't recollect anything.

Q Any telephone conversations?

A No.

Q Any meetings?

A No.

Q Any correspondence?

A No.

MR. BARIST: I will offer Plaintiff's 45 for identification in evidence, letter addressed to Mrs. Van Alen. I am offering 45 in evidence, letter signed Paul, on the stationery of Dominick, addressed to Mrs. James Van Alen, Fox Club, Clifford Street, London, under date of November 20, 1969.

MR. SHAFFER: Your Honor, I don't think I have an objection. I just want to see my copy of it.

THE COURT: That is a defendants' exhibit, is it?

MR. BARIST: Excuse me, it is Defendants' Exhibit 45 for identification, your Honor.

THE COURT: All right.

MR. SHAFFER: No problem, your Honor. No objection.

THE COURT: Received. Defendants' 45.

(Defendants' Exhibit 45 received in evidence.)

MR. BARIST: I read 45 -- by the way, before I do that:

Q Mrs. Van Alen, do you remember writing a letter to Mr. deGive in November of 1969?

A No, I don't.

MR. BARIST: Let me read 45 in evidence.

(Mr. Barist read from Defendants' Exhibit 45.)

THE WITNESS: I don't remember ever receiving the letter.

Q The letter was turned over to me by your attorney and it was in your files, Mrs. Van Alen.

A I don't recall.

Q Do you recall any meeting, communication, correspondence between yourself and Mr. deGive in December 1969?

A No, I don't recall.

Q In January of 1970 do you recall any telephone conversations?

A Yes.

XXX

Q This is one page 223 of Mrs. Van Alen's deposition in this case:

"Question: Excuse me, January of 1970?

"Answer: I don't recall.

"Question: Any telephone conversations with Mr. deGive?

"Answer: I don't recall."

A My memory has been refreshed.

Q I gather. The fact is, Mrs. Van Alen, that in late January 1970 you and Mr. Van Alen called Mr. deGive and told him to sell the securities he had for you; correct?

A Correct.

Q And you called from South Carolina, right?

A That's correct.

Q And you had been meeting down in South Carolina on a shooting party?

MR. SHAFFER: Your Honor, you know, is that relevant?

A We had been visiting some friends.

Q You spoke to friends whose advice you valued on the stock market?

A Whose advice I valued.

Q And included in those friends was Dean Witter,

1 [248]
2 who is the chairman of the board and founder of Dean
3 Witter & Company, a stock brokerage firm?

4 A Well, that is incorrect.

5 Q Was Dean Witter one of your friends?

6 A Yes, but you have the wrong Dean Witter.

7 Q Was the Dean Witter you know connected with
8 the Dean Witter stock brokerage firm?

9 A Yes.

10 Q And he is a close friend of yours?

11 A Yes.

12 Q You discussed the stock market at this time in
13 January 1970?

14 A This is Dean Witter, Jr. He is now dead, I am
15 sorry to say.

16 Q With a Lloyd Griscom?

17 A That's correct.

18 Q And Mr. Griscom is in the investment business
19 with John H. Pell & Company?

20 A That's correct.

21 Q On the basis of what you heard in South
22 Carolina, you and Mr. Van Alen called Mr. deGive and
23 said, "Sell our stocks"; is that correct?

24 A That wasn't the whole basis. We did call him,
25 yes.

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Q And did you tell him to sell the stocks?

A Yes.

Q You were in South Carolina until approximately February 1, Mrs. Van Alen?

A Approximately then. I don't remember the exact date.

Q And you then left South Carolina for Phoenix?

A I don't recall now where we went.

Q Excuse me?

A I don't recall now where we went.

Q You don't recall where you went.

A No. I know we went on a trip, but I don't recall where it was we went. I don't have a file-card memory.

Q From the time you left South Carolina, on or about February 1, for the rest of February, did you set foot in New York State?

A No.

Q You are sure of that?

A Yes.

Q On your deposition, Mrs. Van Alen, in this case you were asked this question, "Did you have any meetings" --

MR. SHAFFER: Tell me the page.

MR. BARIST: 223, 224.

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Q "Question: Did you have any meetings with Mr. deGive in February of 1970?

"Answer: I don't recall."

A I refreshed my memory.

Q From what?

A Our records.

Q What records?

A Oh, whatever records we had.

Q Name it, please. I want to know what record.
I don't have it.

A No, you don't have my railway tickets, my plane tickets. You don't know where we go. I just don't see -- it is just beyond me.

Q You based it on your railway tickets and your plane tickets?

A And where we were and our friends.

Q Where were you? I just asked you the question.

A I don't remember where, but I found out that we were away that month.

Q I am trying to find out --

A And it can be proven, if that is what you are trying to make me into some sort of liar.

MR. BARIST: I move to strike the last two sentences, your Honor.

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THE COURT: Strike it.

Q And you don't recall any meetings with Mr. --
withdraw that.

Did you have any meetings with Mr. deGive in March
of 1970?

A Yes.

Q Page 224:

"Question: Did you have any meetings with Mr. deGive
in March of 1970?

"Answer: I don't recall."

A As I remarked, I refreshed my memory.

Q With what? What helped you refresh your memory?

A With the itinerary of my husband and myself.

Q Where is that itinerary contained?

A Good grief. I don't know how to answer such
questions.

Q Is it in a piece of paper somewhere?

A I found out -- yes, and I can get in touch with
my hostesses where they were and have them write you a
letter and say, "Yes, Candy and Jimmy were staying with
me such-and-such and such-and-such," because --

Q What I want to know is, what refreshed your
recollection as to the meeting with Mr. deGive in March
of 1970 that you just testified to?

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A Because it was down in some of these records.

Q What records?

A Well, what really refreshed my memory is the fact that when we came back from this trip that lasted the whole month of February, into March, we found out he'd gone back in the market again. That's how we found out: we met with him.

Q And you met with him in March of 1970?

A Yes.

Q Where was that meeting?

A I think it was in our apartment. Yes, it was, at our apartment.

Q Do you remember when in March that meeting took place?

A Some time March 2 or later. I think it was later. I can't recall, but it's down in the deposition.

Q It is down in the deposition?

A Wasn't it yesterday we put in the deposition?

Q No, yesterday is the transcript.

A Well, I don't know what it is called.

Q At the time of this meeting in March with Mr. deGive, did you have the confirmation slips with respect to the purchases Mr. deGive made on or about March 2?

A I don't know if I had them or if Miss Watson

1 had just told me about them.

2 Q But somebody had found out about them at that
3 time?

4 A That's correct.

5 Q During the years that Mr. deGive was your
6 stockbroker he was aware of your income tax bracket.

7 THE COURT: Income tax bracket?

8 MR. BARIST: Yes.

9 A I should certainly hope so.

10 Q In fact he knew your income tax bracket?

11 A He was informed.

12 Q In fact you instructed Mr. Murphy, your
13 attorney, to inform Mr. deGive of your tax bracket way
14 back in the early 1950's so he would be aware of this
15 in knowing what to do for your accounts; right?

16 A That's correct.

17 MR. BARIST: I would like to read, your Honor,
18 from Defendants' Exhibit 23 in evidence. In fact, I will
19 put it into evidence -- I am sorry -- Defendants'
20 Exhibit 233 for identification, which is a letter written
21 to Mr. Fitzpatrick, of White & Case, from Kamerman &
22 Kamerman, as plaintiff's counsel, providing us with
23 certain information pursuant to pretrial stipulations
24 and things.
25

1 sustained. You still have your right to use it in the
2 limited fashion previously indicated.
3

4 I think I ought to make it clear that I am not
5 trying to suggest that there isn't some possible relevance
6 between these documents and the point you are trying to
7 make. I am really making a practical determination that
8 in balancing its probative value, under rule 403 I find
9 that it should not be received at this point in any
10 unlimited fashion.

11 MR. BARIST: Your Honor, with your Honor's
12 permission I would like to read to Mrs. Van Alen a
13 statement from the deposition of Mr. Van Alen and ask
14 her if it refreshes her recollection as to her husband's
15 net worth outside of trust funds.

16 THE COURT: Yes.

17 MR. BARIST: I am reading from page 33.

18 THE COURT: Of?

19 MR. BARIST: Of Mr. Van Alen's deposition,
20 taken on September 20, 1973.

21 MR. SHAFFER: In this case?

22 MR. BARIST: In this case, yes.

23 Q "Question: In 1969, sir, aside from trust
24 funds, do you know approximately what your net worth
25 was?

"Answer: Outside of trust funds?

"Question: Yes, sir."

Colloquy of counsel, with Mr. Shaffer, omitted.

"Mr. Shaffer: Go ahead and answer the question, I appreciate the explanation. You can answer it."

Mr. Shaffer rephrases the question. "Do you know what your net worth was aside from the income from the trusts? he asked.

"The Witness:" -- Mr. Van Alen -- "Well, I suppose about--between seven hundred thousand and a million."

Does that refresh your recollection that your husband was worth about \$700,000 to \$1,000,000, outside of the trust funds you testified to, in 1969?

THE COURT: Fix a time.

Q In 1969, approximately.

A Is the date of that 1969? I thought you said '73.

MR. BARIST: Can we ask that the witness answer the question, your Honor?

THE COURT: The reading is from a deposition of Mr. Van Alen, which was either taken or sworn to on September 20, 1973. That is prefatory to the question. The question is whether or not the reading does refresh your recollection as to the extent of your husband's income in or about 1969.

MR. BARIST: Net worth in 1969.

THE COURT: Net worth?

MR. BARIST: Net worth in 1969.

A Yes. Yes, it does.

Q And it was about as Mr. Van Alen testified?

A It refreshes my memory.

Q It refreshes your memory to the effect that your husband was worth about \$700,000 to \$1,000,000 in 1969?

A Yes.

Q Do you remember, Mrs. Van Alen, what was your taxable income in 1964?

A No, I don't.

Q Do you remember what your taxable income was in 1965?

A No, I do not.

MR. SHAFFER: Speak up, Mrs. Van Alen, so we hear you.

A I said no.

Q Let me show you Defendants' Exhibit 64, your tax return for 1965 -- I should say excerpts of it.

MR. BARIST: Your Honor, for the record, the plaintiff's counsel did not want to submit the entire tax return. We have extracts of it here.

Q -- and ask you if your taxable income, if this refreshes your recollection that your taxable income in 1965 was approximately \$194,000.

MR. SHAFFER: That is joint.

MR. BARIST: Joint.

MR. KAMERMAN: Husband and wife.

A Yes, it refreshes my memory.

Q And similarly for --

THE COURT: And it refreshes it to the effect that it was?

THE WITNESS: Well, it is a facsimile of the --

THE COURT: No. That the taxable income for the year 1965 was?

THE WITNESS: \$193,933.

THE COURT: All right.

Q With respect to 1966, do you recollect what your taxable income was, your joint taxable income was in those years?

A No, I don't.

Q Let me show you Defendants' Exhibit 65 for identification and ask you if this refreshes your recollection that your taxable income was approximately \$305,000.

A Yes, that refreshes it.

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Q That your taxable income was approximately \$305,000?

A That's correct.

Q Do you recollect what your taxable income was for 1967?

A No, I do not.

Q Let me show you Defendants' Exhibit 66 for identification and ask you if that refreshes your recollection that your taxable income for 1967 was approximately \$596,000 or \$597,000.

A Yes, it does.

Q It refreshes your recollection it was approximately \$596,000 in 1967, is that correct?

A That's correct.

MR. SHAFFER: Your Honor, may we have a little bit of clarity.

Will you clear up the label you are putting on these? Are you talking about taxable income or gross income in that instance?

MR. BARIST: I believe that was taxable income.

MR. KAMERMAN: Do you want to take another look?

MR. BARIST: Total income.

MR. KAMERMAN: Total income is gross income.

Total income before deductions.

MR. BARIST: I will stand corrected. Total income before deductions.

THE COURT: And that is joint in each instance?

MR. BARIST: Joint in each instance.

I will stand corrected by Mr. Kamerman.

THE COURT: In each instance, all right. Total income.

MR. BARIST: Total income, not total taxable income. Actually, it is adjusted gross income, which is total income with a few minor adjustments, which I don't think will come into play here.

Q Let me ask you: Do you remember what your total income, joint, was for 1968?

A No, I don't.

Q Let me show you Defendants' Exhibit 67 for identification and ask if that refreshes your recollection that your total income for 1968 was approximately \$131,000.

A Yes.

Q It does refresh your recollection that your income was approximately \$131,000 in 1968, is that correct?

A That what was what? Are you correcting your

statement of what you said before?

Q No. Mrs. Van Alen, I asked you the question --

THE COURT: For that year was the amount
\$131,000?

THE WITNESS: That is what is on the bottom
line, your Honor, but I don't know what it means,
whether it is adjusted or gross or what. That is what
I was arguing about. It is the bottom line.

THE COURT: The bottom line being the adjusted
gross income?

MR. BARIST: Yes, your Honor.

THE COURT: You believe that that is what it was?

THE WITNESS: Yes, I do, sir.

THE COURT: Next.

MR. SHAFFER: We concede that.

MR. BARIST: At this time I will offer
Exhibit 64 through 67, your Honor.

MR. SHAFFER: Your Honor, I really have no
objection to the returns coming in.

THE COURT: All right. If you want them in,
they can be received. You have made the point, but if you
think the documents add something to what has been
conceded --

MR. BARIST: I understand your Honor's point.

1 Copies Received

Date May 6, 1977

Firm White & Case

By James H. Hafford